



The Four Juristic Schools

**Their Founders - Development -
Methodology - Legacy**



Translated by
Shaikh Mohammad Daniel

*Academic Proofreading
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Shaikh Adnan b. Salim al-Nahaam



Department of Fatwa



State of Kuwait

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Author by

***Islamic Research Team
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Our Objectives

- ❁ Clarify Islamic rulings related to matters that Muslims encounter on a regular basis.
- ❁ Disseminate proper Islamic knowledge to individuals in society.
- ❁ Disseminate a well-balanced understanding of Islamic law that caters to the situation of Muslims, while employing the true and respectful spirit of Islam.
- ❁ Revive our rich Islamic juristic heritage that respects genuine variety of reasoning, and scholarly differences of opinion.
- ❁ Educate imams and preachers with the juristic knowledge required to answer common queries that occur in society.
- ❁ Participate with society in their auspicious occasions, by educating them through leaflets and other materials regarding these occasions from an Islamic perspective.
- ❁ Publish leaflets and books addressing issues of social importance, and their status and rulings in Islamic Law.
- ❁ Cater to the needs of new Muslims by assisting in their declaration of faith and gifting them beneficial Islamic books in their own language.

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A Message from the Management

All praise be to Allah, the Lord of All the Worlds, and Protector of the Righteous. We bear witness that there is no God but Allah alone, free from all partners. And we bear witness that Mohammed is His slave and messenger. May Allah grant the choicest salutations and peace upon him, his family and companions.

And as to what follows:

The Department of Fatwa at the Kuwait Ministry of Awqaf & Islamic Affairs has routinely provided works that help students of sacred knowledge develop their understanding of matters pertaining to Islamic Law, as well as strengthen their academic ability.

Furthermore, as it is not possible for the student of knowledge to dispense with the study of the books belonging to the renowned juristic schools - particularly the four well-known schools - and to learn the dominant from the anomalous positions of each school, the Islamic Research Team at the Department of Fatwa in Kuwait decided to author this work entitled:

The Four Juristic Schools: Their Founders - Development - Methodology – Legacy

It is hoped that this book will present to the respectable reader, a focused and academic insight of each of the four schools that have survived and found their unique place within this nation while other schools became extinct with the passing of time. These schools were served by their followers, and their legal methodology had been established, the opinions of their scholars recorded, and their positions redacted, thereby distinguishing the dominant position of the school from the weak and anomalous.

This book dedicates a section to each of the four schools and introduces the founders of each school, their principles in deriving rulings, as well as the nomenclature of the schools - which provides

the key to understanding the context of the words and symbols used in each school.

After the completion of this work, the management at the Department of Fatwa in the State of Kuwait submitted the contents of each section to a distinguished jurist of that respective school, who in turn perused it and provided feedback for edits or changes which were then made. Before the introductory chapter of each school, the commendation of the scholar who perused the section is provided. In this way, this project was finally realised, and we are pleased to provide a work that will serve as a guide for the beginner, and a revision for the advanced reader.

In closing, we ask Allah to bless this endeavour so that it bears fruit, and benefits all those with a keen interest in the sacred sciences.

The following people contributed to this project:

Shaikh Turki 'Isa al-Mutairi	(Head)
Doctor Ayman Mohammed Omar	(Member)
Shaikh Nur al-Deen Abdul Salam Mis'ee	(Member)
Shaikh Ahmed Abdul Wahab Salim	(Member)
Doctor Mahmoud Mohammed al-Kabsh	(Member)
Shaikh Mohammed Daniel	(Member)

May the choicest salutations and blessings be upon our Prophet Mohammed, his family and all of his companions.

The Department of Fatwa



In the name of Allah, the Most Beneficent the Most Merciful

Prologue

All praise be to Allah, we praise Him and seek His forgiveness from the evils of our own selves. Whomsoever He guides, none can misguide and whomsoever He allows to be misguided, none can guide. We bear witness that there is no god but Allah alone, free from all partners. And we bear witness that Mohammed is His slave and messenger, who said:

“Whomsoever Allah intends for him goodness he blesses him with an understanding of this religion.”¹

May the choicest salutations and peace be upon him and his family and all his companions. And as to what follows:

The four juristic schools which the Muslim nation have approved, generation after generation, have provided a pivotal role in Islamic Law across Muslim lands. They have been the reference point of arbitration in the courts of Islamic Law and the curricula at Islamic institutes of learning and circles of knowledge. It is upon the principles of these various schools that many graduated to scholarship in their specialties and to these schools they fervently ascribed themselves, to the extent that it became imperative for them to be identified as belonging to a particular school, especially in the written works of Islamic history, biographies, hagiographies and encyclopedias.

This fervent dedication of the scholars only existed because of the distinguishing characteristics of their respective schools over

¹ Narrated by Bukhari and Muslim

other schools due to the noble stature of their founding scholars, the authentic passing down of their statements, the stability and conformity in the legal rulings, the determining of the dominant positions from the anomalous ones; the authentic from the inauthentic; in addition to the strength of their principles and standardisation of their rulings; the clarity of their proofs as well as the sheer dedication of their scholars in serving the school through verifying its proofs, and evaluating and redacting its positions, to the point that those who choose to depend on other schools to learn their religion have without doubt left the true avenue for such.

Al-Hafidh Ibn Rajab (may Allah have mercy upon him) pointed to these special and essential qualities when he stated: *“The wisdom of Allah (Exalted is He) caused for the stability and preservation of this religion by furnishing the Muslim nation with great Imams upon whom the nation hold consensus regarding their knowledge, understanding and stature in religious rulings and edicts in both the schools of traditionalists and rationalists to the extent that people resorted and depended upon them in learning their religion. Moreover, Allah set people to validate their schools and redact their principles to the point that the school of each Imam had been served and its fundamental principles and secondary rulings had been established until they became a reference point for rulings; and statements were refined with regards to the permissible and the forbidden.”*

He continued on this subject until he said: *“...The schools that did not belong to these scholars did not spread and were not validated such that things were ascribed to them which they did not say, or people understood from them what they did not intend, and for these schools there was no one to defend them or point out the misrepresentations, contrary to that which we find in the reputable schools.”*

In addition to this, we find that these four schools have distinguished

themselves from other schools even in issues where they differ, and in their legal rulings, due to their agreement to the primary sources of Islamic Law and its underlying divine objectives and spirit; so rarely does one find anything that is strange or anomalous as you find in other schools such as that of the Dhahiri School. It is for this reason that we find the truth in legal issues is rarely found outside of the four schools, as Shaikh al-Islam Ibn Taymiyyah (may Allah have mercy upon him) states: *“With regards to the statement of the person who says, ‘I do not limit myself to those four scholars’. If he means by this that he does limit himself to one of them leaving the others then he has done well, rather this is the correct of the two positions, but if he means by this that he does not take from any of them and rather differs from them, then he is definitely wrong as in general, the truth is not to be found outside of these four schools.”*

As it is important to mention the status of these schools and the position of their founders as well as learning about their sources, principles, texts and nomenclature, we responded by providing researchers, students and scholars of Islamic Law with this publication that we entitled: **The Four Juristic Schools: Their Founders - Development - Methodology - Legacy**

This work includes a discussion on each of the four schools starting with a biography of the founder; stating his name, lineage, study, journeys, teachers, students, written works, legacy and demise. Then it discusses the development of the school and the academic stages that it went through, from the founding and establishment, to the spreading and following including its collation and redaction. Then it discusses the principle methodology of deriving rulings within the school, the most famous written works of the school, the nomenclature and symbols used within the school that are either found in these written works or used by the scholars, and preference of the soundest or most dominant position in the school.

We have endeavoured to ensure that this work is presented in a

systematic and easy to follow way while maintaining brevity wherever possible, focusing on the most important topics that one should know without going into intricate details, as well as maintaining a simple level of language so that the student, intellectual, jurist or scholar may all find benefit in this work.

In ending, we find it best to quote the words of the renowned scholar Ibn al-Qayyim (may Allah have mercy upon him):

“O’ dear reader of this work; this is the assorted merchandise of the writer brought to you. This is his understanding and thought presented to you. For you is its prosperity and upon the writer its adversity; and for you is its fruit and for him is its recompense, so if it does not beget your praise and gratitude, let it not be bereft of your pardon, and if you refuse only to reproach, then His door remains open.

Allah is the Guarantor of making this endeavour solely for his pleasure, and of ensuring that its author and reader profits in this world and the Hereafter; indeed He is the All-Hearer of supplication, He is sufficient for us and the best Disposer of affairs.”

Finally, we would like end by petitioning Allah the Exalted to accept this effort from us as a good deed that has been done seeking His pleasure only. We ask Allah to bless this effort and to forgive us for any mistake or shortcomings that may have occurred. Ultimately, all praise is for Allah, The Lord of All The Worlds. May He grant the choicest salutations and peace upon our Prophet Mohammed and upon all his family and companions.

Islamic Research Team
Department of Fatwa
State of Kuwait

**Imam Abu Hanifah
al-Numan's
School of Thought**

I have perused the section of this book dedicated to the discussion of Imam Abu Hanifah (may Allah have mercy upon him) and his juristic school, and I am very pleased with the way it has presented the special features of this school; such as the foremost role of its scholars in establishing the school; the broad approach employed for discussing issues and offering solutions; the strict adherence to Islamic textual proofs, resorting to the use of analogy only when an acute need arises for such; and how the school has spread successfully throughout the four corners of the world.

*May Allah bless those who have worked on this unique project;
And all praises are for Allah the Lord of the Worlds*

Dr Ahmed al-Haji al-Kurdi*

* A Hanafi jurist who is a specialist on the Kuwaiti Encyclopedia of Islamic Law and member of the Fatwa council of Kuwait. He has lectured at numerous universities including Damascus University in Syria, and Kuwait University. He has participated in numerous academic conferences as well as teaches Islamic Law regularly to students of knowledge in Kuwait. He has also authored numerous works on Islamic Law including: Personal Status Law, Compensation Law, Islamic Rulings Pertaining to Women, Research Topics in Islamic Law, The Provisions of Hajj, An Introduction to Islamic Law, and many other works.

Imam Abu Hanifah al-Numan's School of Thought

The Hanafi School of Thought is the oldest and one of the most important of all reputable schools of thought. Its popularity has spread across the horizon, and people from all backgrounds have studied, taught and adhered to it, in order to observe the rituals of daily worship.

The Hanafi School is one of the few schools that Allah (exalted is He) decreed would continue to remain active, and be preserved throughout the centuries, meeting with the approval of the *ummah* (Muslim nation), even while many other schools became extinct with the passing away of their founders. In actual fact, today it is the most widespread school in the world, with well over one-third of the Muslim population abiding by its teachings in their daily practice of Islam. After the grace of Allah, this school owes its impressive success to numerous factors that the scholars have detailed in their books.¹

In this short treatise, we hope to learn more about the school and acquaint ourselves with its wonderful features through the following chapters:

Chapter One: Biography of the Founder.

Chapter Two: The Development of the School and its Historical Phases.

Chapter Three: The Fundamental Principles of Derivation in the School.

Chapter Four: The Most Notable Works of the School.

Chapter Five: The Most Frequently Referenced Nomenclature of the School.

¹ See Page 364 of *Tarikh al-Madhahib al-Islamiyyah*; Mohammed Abu Zahra

Chapter One

Biography of the Founder

Firstly: His Name, Lineage and Birth

He is Abu Hanifah Nu'man b. Thabit b. Zuwta b. Mah al-Taymi al-Kufi (may Allah have mercy upon him), the Grand Imam, the Jurist of this nation; one of the greatest jurists and most illustrious scholars of Islam. His grandfather Zuwta was a slave of the Taymullah b. Tha'labah tribe, and upon his coming into Islam, they released him. As for his father Thabit, he was born and raised as a Muslim.

Differences of opinion exist regarding his origin, and it has been said that he was from Kabul or Babylon or Anbar or Termez or Nisa. It seems the best reconciliation of these reports is that the Imam's grandfather was from Kabul in Afghanistan, but he had travelled to these other lands.

With regards to his lineage, it is stated that he is: Nu'man b. Thabit b. Nu'man b. Marzubaan from the land of Persia, and of free birth, never enslaved.

Ibn Hajar al-Haytami (may Allah have mercy upon him) stated that the difference of opinion regarding the names in the lineage of Imam Abu Hanifah (may Allah have mercy upon him) may be due to several reasons:

“Zuwta is the same person as Nu'man, as it is possible that he had two names or he had a name and an agnomen, or that Zuwta translates from Persian into Nu'man; and that Marzubaan is Mah.”

Regarding the differences of opinion regarding the social status of his family, it can be concluded that the biographers who maintain they were captives, are referring to the Imam's grandfather, as he was freed by the Taymullah b. Tha'labah tribe. Those who rejected this status are referring to Thabit, the father of Imam Abu Hanifah (may Allah

have mercy upon him). The Imam is regarded by most scholars of history to be of non-Arab lineage, and Allah knows best.

His Kunya (sobriquet): Abu Hanifah. It is stated that he was called this due to his constant use of an ink-pot, which in the Iraqi dialect was called *hanifah*. It has also been said, that he had a daughter called Hanifah, however this is a weak opinion as it is not known that he had any other children besides his only son Hammad.

His Birth: The most correct opinion is that he was born in the year 80 AH in the city of Kufa during the caliphate of Abdul Malik b. Marwan. It has also been said that he was born in 61 AH, but al-Khateeb al-Baghdadi (may Allah have mercy upon him) said that he did not find any supporting evidence for this claim. Ibn Hajar al-Haytami (may Allah have mercy upon him) stated that this was an anomalous opinion.

The Noble Sahabah (Companions) whom Imam Abu Hanifah Met

Imam Abu Hanifah (may Allah have mercy upon him) was born in the year 80 AH as mentioned previously, so it is without doubt that he met some of the junior companions of the Prophet (peace and blessings be upon him) such as Abu l-Tufail Aa'mir b. Wathilah al-Kinani al-Laythi (may Allah be pleased with him), as he passed away in either 100 or 102 AH.

Some scholars opine that he met four of the *sahabah*, namely: Anas b. Malik, Abd Allah b. Abi Awfa, Sahl b. Sa'ad al-Sa'idi and Abu l-Tufail Aa'mir b. Wathilah (may Allah be pleased with them). It has also been said he met more, however differences of opinion exist with regards to this. Ibn Hajar al-Haytami (may Allah have mercy upon him) wrote a detailed chapter discussing this subject and evaluated the most accurate position with regards to the claims made.

The most correct position as held by al-Khateeb al-Baghdadi and al-Dhahabi (may Allah have mercy upon them) is that he saw Anas b.

Malik (may Allah be pleased with him) during his visit to Kufa, but he did not narrate directly from him or any of the other *sahabah*.

Based upon his seeing Anas ibn Malik (may Allah be pleased with him), we can establish that Imam Abu Hanifah (may Allah have mercy upon him) was from the *tabi'een* as most of the *hadith* scholars state: "*A tab'ee is one who has met a sahabi even if he does not accompany him or narrate from him*". This was the opinion held by Ibn al-Salah and al-Nawawi (may Allah have mercy upon them).

Secondly: His Upbringing and Seeking of Knowledge

Imam Abu Hanifah (may Allah have mercy upon him) was born and grew up in Kufa. During his childhood and early adulthood, there is little sign that he dedicated himself to seeking knowledge; rather he engaged himself in commerce and was a skilled silk-cloth merchant whose shop was well-known in the Amr b. Huraith quarter of Kufa. This all changed one day, when the great Imam al-Sha'bi (may Allah have mercy upon him) came across the young Abu Hanifah, and perceiving his ingenuity and insight, advised him to consider seeking the company of scholars and the path of knowledge. These sincere words of advice etched themselves into the heart of Abu Hanifah, and he started his journey on the sacred path, undertaking the study of theology until he mastered the subject. However, Allah so willed that he then became uninterested in theology through the following incident that he faced.

A lady, realising that he had knowledge, came to him with a question on an Islamic issue, but he did not have knowledge of it and was unable to answer. She then went to the study circle of Imam Hammad b. Abi Sulaiman (d. 120 AH) and asked him the question, which he promptly responded to. She returned to Abu Hanifah and said: "*You deceived me, I spent much time listening to your speech and you are incapable of much.*" This led Abu Hanifah to give up his interest in theology, and he began to attend the circle of Imam Hammad (may Allah have mercy upon him) studying *fiqh* until he became widely recognised for his ability in it.

Thirdly: The Imam's Most Notable Teachers and Students

1) Imam Abu Hanifah's Most Notable Teachers:

Imam Abu Hanifah (may Allah have mercy upon him) lived in an era of great scholarship, the era of the *tabi'een*; and was therefore able to study with many of them. The most notable of his teachers were:

‘A’ta b. Abi Rabah (d. 114 AH), who was the oldest of his teachers and the best of them as he himself stated. Al-Sha’bi (d. 104 AH), who was the one who advised him to study, as previously mentioned. ‘Amr b. Dinar (d. 126 AH), Nafi’ servant of Ibn Umar (d. 117 AH), Qatadah b. Di’amah (d. 118 AH), Ibn Shihab al-Zuhri (d. 124 AH), Mohammed b. Munkadir (d. 130 AH), and Hisham b. Urwah (d. 146 AH). Imam Abu Hanifah’s most famous teacher who had the greatest single impact upon him, and upon whose hands he graduated and continued to study for eighteen years until his passing away, was Imam Hammad b. Abi Sulaiman (d. 120 AH).

2) Imam Abu Hanifah's Most Notable students:

The circle of Imam Hammad (may Allah have mercy upon him) was frequented by his students and those who wanted to specialise in *fiqh*. Upon his passing, Imam Abu Hanifah (may Allah have mercy upon him) assumed the chair in the circle of his mentor. Through his guidance, knowledge and patience, this circle was blessed and continued to flourish, causing people to flock to it from all lands, until it became the single largest circle in the mosque, graduating countless students from it. Not surprising, some of these students became great scholars in their own right, such as:

The Chief Judge of his time Abu Yusuf, Ya’qub b. Ibrahim al-Ansari (d. 182 AH)

The adept jurist Zufar b. Hudhayl al-Tamimi (d. 158 AH)

The eloquent jurist Mohammed b. al-Hasan al-Shaybani (d. 189 AH)

The attentive, noble and virtuous al-Hasan b. Ziyad al-Lulu'i (d. 204 AH)

The scrupulous jurist Abd Allah b. al-Mubarak (d. 181 AH)

The great scholar of hadith Wakee b. Jarrah (d. 197 AH)

'Eisa b. Abaan b. Sadaqa (d. 221 AH)

Hammad b. Abi Hanifah (d. 170 AH) his only child;
and many others...

Fourthly: His assuming the chair for teaching and legal verdicts

After the passing of Imam Hammad b. Abi Sulaiman (may Allah have mercy upon him), known as the leading jurist after Ibrahim al-Nakha'ie (may Allah have mercy upon him), students and colleagues sought to find a suitable replacement to assume the chair left vacant by his death. They were afraid that Hammad's knowledge would be lost and that his legacy would become non-existent. Initially, they chose Isma'il the son of Hammad for this role, however he did not prove a suitable successor for this position in *fiqh*, as most of his time had been spent focusing on Arabic language and literature. Thereafter, they agreed on choosing Imam Abu Hanifah, and found him to be knowledgeable, sympathetic and patient, which were personal traits that they did not find with other teachers. This led them to dedicate themselves to his circle until it became the largest in the mosque, and its reputation spread throughout the land with benefactors and royalty bestowing awards upon the school, and great scholars graduating from it.

Some of the scholars mentioned that Imam Abu Hanifah saw a dream which motivated him further in his commitment to assume the chair and assist the people in their religious queries. He said: *"I saw a dream that frightened me. I saw that I was digging up the earth at the grave of the Prophet (peace and blessings be upon him). I sent*

someone to ask Mohammed b. Sireen (may Allah have mercy upon him) of its interpretation. He said: 'This man will stir up knowledge that no one before him has preceded him to.'” It was after this incident that Imam Abu Hanifah (may Allah have mercy upon him) opened up and brought to the people that which would amaze intellects.

Fifthly: His Writings

Despite his deep knowledge and his leading and venerable position among the scholars of *fiqh*, the Imam (may Allah have mercy upon him) did not pay great attention to penning written works or compiling his thoughts. This is due to his complete engagement in issuing *fatawa* (pl. legal verdicts), discussing with and teaching his students, debating with the innovators and heretics from the *Mu'talizah* and *Khawarij*, and other similar duties. Nevertheless, some of his work even if small in size, are great in benefit, such as *al-Fiqh al-Akbar* in Islamic creed, and *al-Aalim wa l-Muta'alim*.

Sixthly: His Tribulation

As is the tradition of Allah in testing those close to Him from the prophets and the pious in order to elevate their status and increase their rewards, Allah destined that Imam Abu Hanifah (may Allah have mercy upon him) endure his own personal tribulation. This would occur through the government's forceful attempt to engage him in the position of Chief Judge in Kufa, which he vehemently refused to accept due to his scrupulousness and desire to remain away from a position of public office where his principles may be compromised. Imam Abu Hanifah (may Allah have mercy upon him) was from the most scrupulous of people; he would flee from wealth, status, and the company of royalty. His student Imam Abd Allah b. Mubarak famously said: “*I have never seen anyone more scrupulous than Abu Hanifah, he was tried by the use of the whip and the use of wealth.*”

Upon researching the various historical accounts of his life, and works dedicated to his virtue, it becomes apparent that he faced this tribulation on two occasions in his life; once during the rule of the Umayyad dynasty, and then again during the Abbasid dynasty.

The first tribulation was during the reign of Marwan b. Mohammed (d. 132 AH), the last Caliph of the Umayyad dynasty. It occurred when the Governor of Iraq, Yazid b. Amr b. Hubayrah requested Imam Abu Hanifah (may Allah have mercy upon him) to take the office of Chief Judge in Kufa. The Imam declined the offer, and as a result he would be whipped 10 times a day over 11 days; yet he still obstinately refused. The governor realising that the Imam would not have a change of heart, gave up and released him.

The second tribulation occurred during the reign of the Abbasid Caliph Abu Jafar al-Mansoor (d. 158 AH) when he requested the Imam to take the office of Chief Judge, but he again refused as he did the first time. Abu Jafar swore an oath that the Imam would take the position and Imam Abu Hanifah (may Allah have mercy upon him) swore an oath that he would not. It was said to the Imam: *"Do you not see that the Leader of the Believers has sworn an oath?"* He replied: *"The Leader of the Believers is more capable (due to his wealth) of expiating for his oath."* And he continued his refusal to accept the position until he was imprisoned on the orders of the Caliph.

Seventhly: The Praise of the Scholars Regarding Imam Abu Hanifah

Imam Abu Hanifah (may Allah have mercy upon him) reached great levels of devotion in his scrupulousness, ascetism, and worship; and this can only be expected from people of his stature. The great scholars of the past agreed upon his virtue and described him as such. Imam al-Dhahabi said: *"The reports regarding the nightly devotion, prayers and worship are copious."* He also said: *"It has been reported through two chains that Imam Abu Hanifah completed the entire Quran in one raka'ah (unit) of prayer."*

Al-Khateeb al-Baghdadi narrates: *"Abu Hanifah (may Allah have mercy upon him) stood one night in prayer until he reached the verse:*

﴿فَمَنْ لِّلّٰهُ عَلَيْنَا وَّوَقِنَا عَذَابَ السَّمُورِ﴾ الطور: ٢٧

And so God has graced us with His favour, and has warded off from us all suffering through the scorching winds [of frustration] (52:27)

And he kept repeating it, until the Mu'addhin made the call to the Fajr prayer."

And it was also narrated that he stood in prayers repeating this verse throughout the night while crying profusely:

﴿بَلِ السَّاعَةُ مَوْعِدُهُمْ وَالسَّاعَةُ أَدْهَىٰ وَأَمَرٌ﴾ القمر: ٤٦

But nay - the Last Hour is the time when they shall truly meet their fate; and that Last Hour will be most calamitous, and most bitter. (54:46)

Abu 'Assim al-Nabeel said: *"Imam Abu Hanifah was called "a post" due to his long uninterrupted standing and devotion in prayer."*

Abd Allah b. al-Mubarak the renowned ascetic said: *"I entered Kufa and enquired as to who was the most scrupulous person. The people responded: "Abu Hanifah"."*

Yazeed b. Haroon said: *"I penned down hadith from one thousand teachers and bore knowledge from them. By Allah! I never saw anyone from them more scrupulous and guarding of his tongue than Imam Abu Hanifah."*

On one occasion, Imam Abu Yusuf (may Allah have mercy upon him) entered the assembly of the Abbasid Caliph Haroon al-Rasheed (may Allah have mercy upon him) who asked of him to describe Imam Abu Hanifah (may Allah have mercy upon him).

In response he said:

"By Allah, he was very strict in removing himself from the

prohibitions of Allah, refraining himself from the company of those engaged in worldly pursuits; he was constantly in thought and rare in speech.

He was not talkative; if asked about an issue regarding which he had knowledge, he would answer. O' Leader of the Believers, I never knew of him, except that he would preserve his self and his religion, busying himself with his own self, rather than the faults of others. He would not speak about anyone except goodness. Al-Rasheed said: "These are the characteristics of the pious".

The virtues of the Imam are innumerable and here we have sufficed by mentioning but a little of that which the great Imam possessed.

Eighthly: His Passing Away

The Imam (may Allah have mercy upon him) passed away in the central prison of Baghdad in the month of Rajab or Sha'baan in the year 150 AH, aged 70. Such a large number of people attended his funeral prayer that no space remained. One congregation after another, prayed until a total of six congregational funeral prayers were performed so that all attendees could fulfill their duty to the deceased Imam (may Allah have mercy upon him). He was buried at the Khaizuraan Graveyard in Baghdad.

Ibn Hajr al-Haytami stated: *"It is established that when he felt the pangs of death, he prostrated and his soul was taken whilst in this position."*

May Allah have mercy upon the great Imam Abu Hanifah and reward him immensely, and in the best of ways, on behalf of everyone in this nation.



Chapter Two

The Development of the School and its Historical Phases

The founding of the Hanafi School goes back to the second century of Hijrah, on the day that Imam Abu Hanifah (may Allah have mercy upon him) was invited to assume the chair of the circle after the death of his teacher Imam Hammad b. Abi Sulaiman in 120 AH. This was the year that witnessed the founding of the first ever reputable school of Islamic legal reasoning or thought.

The school, headed by Imam Abu Hanifah (may Allah have mercy upon him), began to develop and spread as many students of *fiqh* flocked to it, penning down the legal arguments of its founder, and spreading them throughout the lands. The greatest credit for the spread of the school goes to the *Sahibayn* (lit. two companions), Imam Abu Yusuf and Imam Mohammed b. Hasan al-Shaybani who left no stone unturned in ensuring that the statements and views of their teacher spread far and wide.

Imam Ibn Abdil Barr (may Allah have mercy upon him) said: *“Imam Abu Hanifah had distinguished students who were leaders in the (Islamic) world and his fiqh became manifest through their hands; the eldest of them was Abu Yusuf, Ya’qub b. Ibrahim al-Ansari.”*

Ibn Hajr al-Haytami (may Allah have mercy upon him) said: *“He (Abu Hanifah) was blessed with many followers, and they carried out the process of verifying and codifying the principal and substantive laws of the school; perusing his statements and reasoning until it became - through the grace of Allah - definitive in its rulings; the source of great benefit.”*

The first person to author a work on the Hanafi School was Abu Yusuf. He penned the opinions and statements of the school in numerous works including *Kitab al-Athaar* and *Ikhtilaaf Ibn Abi Layla*, in which he defended his teacher from the differences of Ibn

Abi Layla, as well as his book *al-Rad ala Siyar al-Awza'ie* in which he defended his teacher and school of thought.

Add to that, the fact that Abu Yusuf served as Chief Justice for the Abbasids for over 16 years, and was charged with the responsibility of choosing all the judges across the Abbasid Caliphate; and often would commission those who followed the Hanafi School. This had a huge effect on ensuring the *fiqh* and statements of Imam Abu Hanifah spread throughout the lands of the Abbasid Caliphate.

As for Imam Mohammed, he is known as the conveyor of the Hanafi School. This he did through his numerous works, such as those that make up the six canonical works of the Hanafi School known as *Dhahir al-Riwayah*. These are regarded as the first point of reference for the Hanafi School and they consist of: *al-Mabsoot (al-Asal)*, *al-Ziyadaat*, *al-Jami' al-Sagheer*, *al-Jami' al-Kabeer*, *al-Siyar al-Sagheer*, and *al-Siyar al-Kabeer*.

The Hanafi School went through three main phases of development over the course of its founding until the present day, and they were:

The First Phase: The Founding of the School and its Development (120 - 204 AH)

This phase began from the era of Imam Abu Hanifah (may Allah have mercy upon him) and continued to the passing of al-Hasan b. Ziyad al-Lulu'i (d. 204 AH) (may Allah have mercy upon him), one of the Imam's most senior students.

In this phase, the school was being established; and its principles and underlying rules which would lay down the foundation for the extraction of substantive legal rulings, were being formulated. This occurred at the hands of the Imam himself and through his guidance, as the contemporary scholar Abu Zahra stated.

Imam Abu Hanifah (may Allah have mercy upon him) employed his own unique pedagogy which involved open discussion and debate between him and his senior students on topics of *fiqh*, until a ruling

was formulated. Once formulated, he would request Abu Yusuf to record it.

Al-Muwwafaq b. Makki (may Allah have mercy upon him) in describing the pedagogy of Imam Abu Hanifah with his students, states: *“Abu Hanifah founded his school on the principle of mutual consultation; he did not give preference to himself over his students in his sincere exertion for the religion and in his strict adherence to the principle of nasiha (faithfulness) towards Allah, His Messenger and all Muslims. He would present an issue to his students, consult them and listen to their response, and then state his conclusion; sometimes debating them for a month or more until a decision was reached regarding the issue and an opinion was decided. It was then recorded by al-Qadhi Abu Yusuf in the primary compilation until all laws had been recorded.”*

Based upon this methodology, the students of Imam Abu Hanifah actively participated in the establishment of the school, and were not only bystanders accepting every position that he presented to them. Furthermore, it was not only Abu Yusuf who used to record the final outcome of the discussions and debates, rather there were ten scribes who were responsible for this and they were directed by the four most senior students namely: Abu Yusuf, Mohammed b. al-Hasan, Zufar b. Hudhayl and al-Hasan b. Ziyad. These four students, in particular Abu Yusuf and Mohammed b. al-Hasan, contributed greatly to the evaluation and development of the school after the demise of their teacher. They did this by sifting through the approved verdicts arrived at during the era of their teacher and evaluating them in light of the latest legal proofs, changes in society, and the problems faced by the people in their lives. This is why we find that Abu Yusuf and Mohammed reviewed the positions that were approved by their teacher when they came across the knowledge of the people of Hejaz, and in numerous instances they chose to diverge from their teacher's position in both principal and substantive rulings.

Despite their differing with their teacher, they are still regarded as

Hanafi jurists because they practiced *ijtihad* (scholarly exertion to derive legal rulings) based on the principles and methodology that their teacher Imam Abu Hanifah (may Allah have mercy upon him) had taught them. It is for this reason, that their conclusions and thoughts were penned down with those of their teacher, and became a part of the Hanafi School. In fact, we find that the Hanafi School's *fatwa* is sometimes based upon the position of Imam Abu Hanifah, and sometimes on the positions held by the two companions or others.

The Second Phase: The Growth, Expansion and Spread of the School (204 - 710 AH)

This phase began after the passing of al-Hasan b. Ziyad al-Lulu'i (d. 204 AH) (may Allah have mercy upon him) and ended with the passing of Imam Hafidh al-Deen Abd Allah b. Ahmed b. Mahmoud al-Nasafi (d. 710 AH) (may Allah have mercy upon him), author of the famous Hanafi primer *Kanz al-Daqa'iq*.

This phase represents the most thriving and prosperous period in the expansion and spread of the Hanafi School. With this expansion, came a widening of opinions and a development of thought, as many great Hanafi scholars who appeared at the beginning of this phase exerted themselves unrelentingly to verify the school, define its nomenclature, and document the methods and principles for extracting the preferred position of the school. The works of Mohammed b. Hasan, known as the *Dhahir al-Riwayah* collection was the primary reference point for the opinions and statements of the school.

We also find that during this period there was a strong movement of compiling and authoring works that brought to the fore and discussed various unprecedented occurrences or contemporary issues in *fiqh*. These works outlined the developing opinions of the school in relation to these issues. From this effort, came several summaries and primers such as the *Mukhtasar of al-Tahawi* (d. 321 AH), the *Mukhtasar of al-Karkhi* (d. 340 AH), the *Mukhtasar of al-Qudoori* (d. 428 AH), *Bidayah al-Mubtadi of al-Marghinani* (d. 593 AH), as well as other works.

Furthermore, we find that the Hanafi scholars authored commentaries such as *al-Mabsoot of Shams al-Aimmah Sarakhsi* (d. 490 AH), *Bada'i' al-Sana'i' of al-Kaasaani* (d. 587 AH), and *al-Hidayah of al-Marghinani* (d. 593 AH), as well as other works. We also find works dedicated to *fatwa* and *nawazil* (unprecedented occurrences), such as *Nawazil al-Samarqandi* (d. 373/375 AH), *Fatawa al-Hulwani* (d. 448 AH), *Fatawa of al-Sadr al-Shaheed* (d. 536 AH), *Fatawa Qadhi Khan* (d. 592 AH), and many other written works that make up a very large corpus of knowledge and Hanafi heritage that was left behind from this very active phase in the history of the school.

During this period, and particularly in the fourth century, we also find a different genre of books being authored by Hanafi scholars. These were dedicated to identifying and providing the supporting *hadith* for positions held in the Hanafi School. The most notable of these were the *Sharh Ma'ani al-Athaar* and *Mushkil al-Athaar* both works of Imam al-Tahawi.

In this phase, the Hanafi School also found within itself two sub-schools of legal theory, each with its own unique traits.

The Iraqi School: An extension of the original school of Imam Abu Hanifah and his direct students which was headed by Abu l-Hasan al-Karkhi.

The Samarqandi School: Headed by Abu Mansur al-Maturidi, this school focused on blending the principal laws with theology, which resulted in them differing with the Iraqi School with numerous divergent and anomalous opinions.

The Third Phase: The Stability of the School (710 AH - present day)

This phase began after the passing of Imam Abd Allah al-Nasafi (d. 710 AH) or the beginning of the eighth century Hijrah, and continues till the present day.

This phase, contrary to the previous phase, saw a stagnation of juristic thought and exertion, with the scholars sufficing with their dependency upon the juristic opinions and verdicts of those that had preceded them. They however served the previous works through commentaries, marginalia, refutations, and other similar contributions in this phase. This resulted in extensive research, discussion, clarification, and substantiation - to the point of satiation - being conducted on the rulings of the school, which helped immensely in identifying with more clarity, the most dominant positions in the school.

Perhaps one of the clearest examples symbolising the stagnation of juristic thought that occurred in this phase, is demonstrated by the inability of the *mujtahid* (senior-jurist) who had reached a high level of expertise in interpreting the sources, to depart from the position of the school except in dire necessity, even if the position reached by them was stronger than all former positions of the school.

In explaining the famous phrase of Imam Abu Hanifah (may Allah have mercy upon him): *"If the hadith is sound, it is my madhhab (position of the school)"*, Ibn 'Abideen states: *"This is to be restricted to things that agree with one of the positions in the school, as permission is not given for ijtihad outside of the positions in the school which our imams have agreed upon, as their ijtihad is stronger than that of his."*

Based upon this, the redacting conducted by Ibn al-Humam, described as 'the seal of the verifiers' by Ibn 'Abideen, was rejected and not practiced, to the extent that his student Qasim said: *"We do not practice upon the research of our Shaykh, that which is contrary to the school."*



Chapter Three

The Fundamental Principles of Derivation in the School

Even though Imam Abu Hanifah (may Allah have mercy upon him) did not leave behind the precise details of the methodology he employed in his school, nor the guidelines of how he performed his research and juristic rulings, we do find several narrations that clarify the general guidelines that he depended upon in drawing up the founding principles of his school. Some of these narrations are provided below:

Narrated al-Saymari and al-Khateeb al-Baghdadi on the authority of Yahya b. Durays:

“I was with Sufyan when a man came to him and said: What do you hold against Abu Hanifah? He responded: ‘And what is with him?’ He said: “I heard him (Abu Hanifah) say: ‘I resort to the Book of Allah (for legal verdicts) and if I cannot find therein, I resort to the Sunnah of Allah’s Messenger (peace and blessings be upon him). If I do not find it in the Book of Allah, nor the Sunnah of Allah’s Messenger, I resort to the statements of the sahabah; choosing as I prefer and leaving as I prefer, but I do not leave their statements for those of others. However, if nothing is to be found from their statements and the (legal) matter comes to Ibrahim, al-Sha’bi, Ibn Sireen, al-Hasan, ‘A’ta, Sa’eed b. al-Musayyab and others, then they are a people who exercised ijtihad, and I exert myself as they did.’”

Al-Muwaffaq b. al-Makki in his work *al-Manaqib*, narrated on the authority of Abdul Kareem b. Hilal, from his father who said: *“I heard Abu Hanifah say: ‘If I find the matter in the Book of Allah or the Sunnah of the Prophet (peace and blessings be upon him), I utilise it and do not leave it; and if the sahabah differ, I choose from their statements, and if it comes from (someone) after them, I take it or leave it.’”*

Ibn al-Makki also narrates from Sahl b. Muzahim who said: *“The speech of Abu Hanifah is to take the trustworthy and leave the offensive, to peruse the dealings of people and what their affairs have settled upon, and employ juristic analogy in matters. However if employing analogy would result in an offensive ruling, he resorted to scholarly discretion if it served well; if it did not, he would resort to the customs of the Muslims, and he would follow the well-known hadith that Muslims had agreed upon, deriving rulings from them based upon analogy as long as analogy was agreeable; and then he would resort to scholarly discretion, whichever was more befitting he would resort to. This is the knowledge of Abu Hanifah (may Allah have mercy upon him), knowledge of the public.”*

And it was also narrated on the authority of al-Hasan b. Salih who said: *“Imam Abu Hanifah was extremely diligent in researching the abrogating and abrogated ahadith (pl. hadith), and he would practice according to them if he deemed them as authentically attributed to the Prophet (peace and blessings be upon him) or the sahabah. He was knowledgeable of the hadith prevalent in Kufa, and the fiqh of Kufa, and strict in adhering to the practice of the people of Kufa.”*

It is through these narrations that we are informed of the methodology that Imam Abu Hanifah employed in deriving rulings within the school. These were analysed and crystallised by Hanafi scholars who defined their parameters and inserted them into the methodological matrix of the school, from which they ascertained that the fundamental principles of derivation employed by Imam Abu Hanifah were as follows:

1) The Book of Allah: It is the primary repository of all principles, the source of all sources. There is no source except that its origin is proven in this book. It is the shining light of Islamic Law.

2) The Sunnah: This is the secondary repository of Islamic Law; the living commentary and exegesis of the Book of Allah through the actions and statements of the Prophet (peace and blessings be upon him). Imam

Abu Hanifah would utilise the reports that were authentically attributed to the Prophet (peace and blessings be upon him). If there were two authentic, but seemingly contradictory reports he would choose the most suitable of them from the *mutawatir* (narrations where many sources narrated from many in every generation of the chain) and *mashoor* (well-known). He would also do the same for *aahad* (solitary) report unless it contradicted strictly reasoned analogy. If there was contradiction, he would give preference to analogy, not owing to a whim - Allah forbid - as he is noble and too high in esteem to follow a whim; nor out of rejecting *sahih* (authentic) *hadith*. It is known how strict Imam Abu Hanifah was in accepting narrations and preserving the *hadith*, due to his extreme diligence and precaution.

Rather, when the *aahad* narration conflicted with a principal law that had been established through the usage of definitive evidence, he would then regard the narration as weak, and rule by the principal law - the proof-value of which was undoubted.

It is apparent that the principal methodology of Imam Abu Hanifah was to prefer *aahad* reports over analogy as stated by Abu Zayd al-Dabusi: “*The principal method of the three Imams - Abu Hanifah, Abu Yusuf, and Mohammed b. al-Hasan - is to give preference to the reports narrated from the Prophet (peace and blessings be upon him) through solitary chains, over analogy proper.*” However, they may leave this method owing to various interpretations (of the solitary narration) as Ibn Abdil Barr stated:

“His rejecting that which came through solitary reports was due to the possibility of a variant interpretation; and in many of these cases, he followed those that preceded him, and the scholars followed him, so in most cases we find that he conformed to the scholars of his land such as Ibrahim al-Nakha’ie (may Allah have mercy upon him) and the students of Abd Allah b. Masood (may Allah be pleased with him)...”

Then Ibn Abdil Barr continued by saying: “*It is not possible that any scholar of this ummah comes across an authentic hadith of the*

Prophet (peace and blessings be upon him) and rejects it outright, unless he claims that it has been abrogated by a similar hadith, or by consensus, or a weakness in the chain; because if anyone did such, his Islamic uprightness or credibility would be tarnished, let alone being taken as an Imam; and he would be regarded as an open sinner.”

3) Ijma' (Consensus)

The principle of consensus is employed when no text can be found in the Book of Allah or the *sunnah* regarding an Islamic ruling. This is what is meant by his statement: “*And the analogy that we have taken... we practice according to the Book of Allah, sunnah and consensus (first).*”

4) The Statements of the Sahabah (may Allah have mercy upon them)

The Imam employed the statements of the *sahabah* as a means of derivation, and if there were many varying statements, Imam Abu Hanifah would choose that which he felt was closest to the objectives and spirit of Islamic Law, and he would not leave their statements.

5) Qiyas (Juristic Analogy)

The Imam employed *qiyas* as a means of derivation only when he had exhausted the above-mentioned principles of derivation available to him. He would exercise *ijtihad* through analogical reasoning if he found the reasoning agreeable. He would not give preference to analogy over any of the previous methods of derivation even if he sometimes felt that the ruling was best served by analogy. However, he would leave analogy in favour of the sacred texts as we observe in the *hadith* of Abu Hurairah regarding the person who eats or drinks forgetfully. He took this narration and gave ruling by it even though it went against the principle of analogy that he had arrived at, and he said: “*If it were not for the narration, I would have given the ruling*

according to analogy.”

6) Istihsaan (Scholarly Discretion)

The Imam resorted to the use of scholarly discretion when it appeared to him that the outcome of employing analogy would result in a legally unfair or offensive ruling. This usage of scholarly discretion was not based on a personal whim or an action without corroboratory proof from Islamic Law, for he is too noble and pious to fall into such, rather he regarded scholarly discretion in the way best described by Abu l-Hasan al-Karkhi:

“Istihsan is when a scholar (through discretion) authorises himself to depart from an established precedent in preference of a different ruling, for a reason stronger than the one which is obtained in that precedent.”

And this is the best description of the concept of scholarly discretion that was given as mentioned by Abu Zahra.

7) Al-Urf (Custom)

If there was no text, consensus or interpretation of the texts through analogy or scholarly discretion, then the Imam would investigate the dealings of people and derive rulings based on the customs of the people.



Chapter Four

The Most Notable Works of the School

We previously described how the Hanafi School became the most widespread and followed of the renowned schools, which contributed to its enjoying a very rich variety of texts. These texts vary from the concise and abridged primers to the extensive commentaries, didactic poems, marginal glosses, and compilations of *fatawa*. Of these works some have received wide scholarly acclaim, and their reputation surpasses those of other works, making them the most recognised and authoritative texts through which the school is taught; mainly owing to their concern for transmitting the sound and dominant positions in the school.

The verifiers among the latter-day Hanafi scholars such as Ibn ‘Abideen and al-Laknawi have divided the written works into two categories: the authoritative works that convey the position of the school, and those that are not authoritative and are not permitted for use in issuing *fatawa*. These scholars mentioned the reasons behind these works not being authoritative, which include them containing weak positions or containing irregular rulings, even though some of them may have been written by renowned scholars. Some of these works are *al-Qunya* of Imam al-Zahidi (d. 658 AH), *al-Siraj al-Wahaj Sharh Mukhtasar al-Qudoori* of Imam Abu Bakr al-Hadadi (d. 800 AH) and *al-Durr al-Mukhtar* of Imam al-Haskafi (d. 1088 AH). Alternatively, they may have been authored by unskilled jurists who lacked proper training and compiled rulings from whatever sources they came across, such as we find with Sham al-Deen al-Qahsatani (d. 953 AH) author of *Sharh al-Nuqayah* also known as *Jami al-Rumooz*, and also with Mulla Miskeen (d. 954 AH) author of *Sharh al-Kanz*.

As for the authoritative works, there are many, and we will mention some of them as follows:

Firstly: The Authoritative Works

At the top of the list are the *Dhahir al-Riwayah* books that we discussed earlier, and the status of these books in the school is similar to the status of the *Sahihayn* (Sahih al-Bukhari and Sahih Muslim in *hadith* sciences). They are the primary repository of works that are referred to in order to identify the *fiqh* of Imam Abu Hanifah and his students. It is for this reason that they have received the greatest of attention, and the great Imam Mohammed b. Mohammed b. Ahmed al-Marwazi also known as al-Hakim al-Shaheed (d. 334 AH), compiled them all and abbreviated them into one work which he entitled *al-Kafi*. It is for this reason that the Hanafi scholars held this work in high esteem as one of the primary works, and competed with each other in writing commentaries on the work; the most famous of these is *al-Mabsoot* of Shams al-Aimmah Mohammed b. Mohammed b. Abi Sahl al-Sarakhsi. Ibn ‘Abideen in his didactic poem stated:

The six are gathered in *al-Kafi*
penned by al-Hakim al-Shaheed it suffices
The strongest commentary is like the sun
the *Mabsoot* of Shams al-Aimmah Sarakhsi
Authorative in its positions we do not
go against it nor can it be dispensed with.

And Ibn ‘Abideen also provided the statement of Imam al-Tarsusi regarding *al-Mabsoot* when he said: “*We do not do anything contrary to the Mabsoot of al-Sarakhsi, and we do trust except upon it, and we do not pass fatwa except according to it, and we do not rely except upon it.*”

Secondly: The Authoritative Treatises

These are divided into:

- 1) The authoritative treatises of the early-day scholars

2) The authoritative treatises of the latter-day scholars

These were authored by the great early-day jurists in the Hanafi School such as Abu Bakr al-Khassaf (d. 261 AH), Abu Ja'far al-Tahawi (d. 321 AH), al-Hakim al-Shaheed (d. 334 AH), Abu l-Hasan al-Karkhi (d. 340 AH), Abu Bakr al-Jasaas (d. 370 AH) and others.

These treatises and abridged works in their authority follow suit with the *Masa'il al-Usool* and *Dhahir al-Riwayah* works in their authenticity and reliability of transmission.

Imam al-Mutu'ee states: *"It is incumbent to take what is transmitted in the usool, and then that which is found in the treatises and the abridged works such as the Mukhtasar al-Tahawi, al-Karkhi al-Hakim and al-Shaheed, as these are the well regarded and approved works that are known in the circles of the scholarly class."*

As for the authoritative texts of the latter-day scholars, Ibn 'Abideen has stated: *"The basic primers are al-Bidayah, Mukhtasar al-Qudoori, al-Mukhtar, al-Nuqayah, al-Wiqayah, al-Kanz and al-Multaqa, these are the works that convey the school according to Dhahir al-Riwayah."*

In the following pages we have listed some of these works and provided a brief outline of the texts that have been dedicated to explaining them.

1) Mukhtasar al-Qudoori: of the leading Hanafi scholar of his time Imam Abu l-Hasan Ahmed b. Mohammed b. Ahmed b. Ja'far b. Hamdaan al-Qudoori (d. 428 AH). It is an abridged work that covers the substantive laws. In it, Imam al-Qudoori has compiled the dominant positions from the various narrations that occur in the *Dhahir al-Riwayah* works. This work is referred to affectionately as *al-Kitab* by Hanafi scholars.

Haji Khalifah stated: *"It is a concise, rich and well regarded work that is known in the circles of the scholars, and its fame relieves it of*

any need of further introduction.”

The commentaries that have been dedicated to expounding it are abundant and from amongst them are *al-Lubaab* of Jalal al-Deen al-Yazdi (d. 591 AH) and *al-Tarjeeh w al-Taseeh ala Qudoori* of Ibn Qutlubugha al-Hanafi (d. 879 AH).

2) Bidayah al-Mubtadi: of the leading Hanafi scholar of his time Imam Ali b. Abi Bakr b. Abdul Jaleel al-Marghinani (d. 593 AH). In this work, he combined between *Mukhtasar al-Qudoori* and *al-Jami al-Sagheer* of Mohammed b. Hasan. Then he wrote a commentary on this work entitled *al-Hidayah*. In time, *al-Hidayah* became one of the pivotal works in the school and many Hanafi scholars dedicated commentaries to it. The great Indian scholar Mohammed Abdul Wahab al-Bahawi stated: “*When al-Hidayah became one of the pivotal books in the Hanafi School, the scholars flocked to it...*”.

From the most popular of the commentaries is by Sharh al-Babarti (d. 786 AH) entitled *al-Inayah* and also that of Ibn al-Humam (d. 861 AH) entitled *Fath al-Qadeer lil 'Ajiz al-Faqeer*, which is the most popular and approved of the commentaries among Hanafi scholars. In addition to these there are many others.

3) Wiqayah al-Riwaya fi Masa'il al-Hidayah: of Mahmoud b. Ahmed b. Ubaid Allah b. Ibrahim al-al-Mahboubi known as Taj al-Shari'ah (d. 673 AH). The author based this work on *al-Hidayah* and selected sections for his grandson Sadr al-Shari'ah to memorise with ease. Haji Khalifah states: “*It is a famous primer which the scholars approvingly read, taught and memorised.*” Many commentaries have been dedicated to it and the best of them as al-Laknawi stated is the commentary of his grandson Sadr al-Shari'ah Ubaid Allah b. Mas'ood b. Mahmoud al-Mahboubi (d. 745/747 AH). Haji Khalifah states: “*This commentary is not in need of an introduction owing to its fame.*”

4) Al-Mukhtar lil Fatwa: of Imam Abu l-Fadl Abd Allah b. Mahmoud al-Mowsily (d. 683 AH) is an epitome that focuses on the substantive laws pertaining to actions. The author chooses the statements of Imam Abu Hanifah from the Dhahir al-Riwayah works, then expounds on them in his commentary entitled *al-Ikhtiyaar li Ta'leel al-Mukhtar*, which is also served by numerous other commentaries. Al-Laknawi stated: “*I have perused al-Mukhtar and al-Ikhtiyaar and both of them are regarded well by the jurists.*”

5) Majma' al-Bahrain wa Multaqa al-Nahrain: of the erudite scholar Imam Muzaffar al-Deen Ahmed b. Ali b. Tha'lab al-Baghdadi known as Ibn Sa'a'tee (d. 694 AH). In this work, the author combines between the text of *Mukhtasar al-Qudoori* and *Manzoomah al-Nasafi* with some additions. He then organised and summarised the text in a very systematic way showing great precision. Haji Khalifah states: “*It is a book that is easy to memorise due to its short passages, but difficult to unlock its meanings due to its extreme brevity, depth in rulings and abundant merits.*”

Many commentaries have been dedicated to it including the very detailed *al-Mustajmi'* of Qadhi Badr al-Deen al-Ayni (d. 855 AH) and *Tashneef al-Musma' fi Sharh al-Majma'* of Qadhi Ahmed b. Mohammed b. Sha'baan al-Tarabulsi al-Maghribi (d. 1020 AH).

6) Kanz al-Daqa'iq: of the great Imam Abu l-Barakat Hafidh al-Deen Abd Allah b. Ahmed b. Mahmoud al-Nasafi (d. 710 AH), which is one of the primers that the Hanafi scholars have included in their general statement, “*the three primers*”, which shows the popularity and renown that it holds with them. Al-Laknawi states: “*Kanz al-Daqa'iq is a famous primer in fiqh.*” Hanafi jurists have paid great attention to it and numerous commentaries have been dedicated to it with the most famous being that of Imam Fakhr al-Deen Uthman b. Ali al-Zayla'ie (d. 743 AH) entitled *Tibyaan al-Haqa'iq lima fihi min Tabyeen ma Aktanaz min al-Daqa'iq*. Al-Laknawi states: “*I have perused the commentary (of al-Zayla'ie) of al-Kanz and it is reliable and approved. When the word*

“the commentary” is used in *al-Bahr al-Raiq* it refers to this work.” In addition to this, we find from the approved and famous commentaries that of Imam Zain l-’Abideen b. Ibrahim known as Ibn Nujaym al-Masri (d. 970 AH) and entitled *al-Bahr al-Raiq Sharh Kanz al-Daqa’iq*.

7) Al-Nuqayah Mukhtasar al-Wiqayah: of Sadr al-Shari’ah Ubaid Allah b. Mas’ood b. Mahmoud al-Mahboubi (d. 745/747 AH). This work is an abridgment of *al-Wiqayah* which was authored by his grandfather Taj al-Shari’ah. Many commentaries have been dedicated to it, including *Kamal al-Dirayah fi Sharh al-Wiqayah* of Shaykh Taqi al-Deen Ahmed b. Mohammed al-Shumunni (d. 872 AH). Another commentary is *Fath Baab al-Inayah li Sharh al-Nuqayah* of Mulla Ali b. Sultan al-Qari al-Harawi (d. 1014 AH).

8) Multaqa al-Abhur: of Imam Ibrahim b. Mohammed al-Halabi (d. 956 AH). This work is a compilation of rulings from “the four primers”: *al-Qudoori*, *al-Mukhtar*, *Kanz al-Daqa’iq*, and *al-Wiqayah*. The author also added some essential rulings and parts of *al-Hidayah*, then he stated the most authoritative of the juristic positions; and due to this effort, the work received much acclaim from Hanafi scholars in the east and west. Many commentaries have been dedicated to it including that of Imam Mohammed b. Ali b. Mohammed known as ‘Ala al-Deen al-Haskafi (d. 1088 AH) and entitled *al-Durr al-Muntaqa fi Sharh al-Multaqa*. In addition to this, the scholars after the advent of the first millennium of the Hijrah calendar approved the commentary of Imam Abdur Rahman b. Mohammed b. Sulaiman also known as Shaykhi Zada (d. 1072) entitled *Majma’ al-Anhur Sharh Multaqa al-Abhur*.

Another famous commentary worthy of mention is *Bada’i’ al-Sana’i’ fi Tarteef al-Shara’i’* of the great Imam ‘Alaa ul-Deen Abu Bakr b. Mas’ood al-Kasaani known as Malik al-Ulama (king of the scholars) (d. 587). It is an impressive commentary that he dedicated to *Tuhfat al-Fuqaha* of Imam ‘Alaa ul-Deen al-Samarqandi (d. 539 AH). Haji Khalifah states: “This commentary is worthy of carrying the title

it was given.”

Other commentaries that received widespread acclaim among the scholars and became the preferred choice with latter-day scholars after the first millennium are:

1) Radd al-Mukhtar ala Durr al-Mukhtar also known as Hashiya Ibn ‘Abideen: of the erudite scholar Mohammed Ameen ‘Abideen al-Dimashqi al-Hanafi (d. 1252 AH). This work was described by Mohammed Ahmed Ali as: “*Scaling the heights of fame among the works of the latter day period, and it is the approved work by most contemporary scholars.*” This is a marginal gloss on ‘Alaa ul-Deen al-Haskafi’s *al-Durr al-Mukhtar*, who wrote a commentary on *Tanweer al-Absaar* of Mohammed b. Abd Allah al-Tumurtashi (d. 1004 AH). However, he passed away before completing it, and it was later completed by his son Mohammed ‘Alaa l-Deen b. ‘Abideen.

2) Umdat al-Ri’ayah fi hal Sharh al-Wiqayah: of the erudite scholar Mohammed b. Abdul Hayy al-Laknawi al-Hindi al-Hanafi (d. 1304 AH), which is a marginal gloss on the *Sharh al-Wiqayah* of Imam Sadr al-Shari’ah. This work is renowned and popular among the scholars of the Indian sub-continent.

In addition to the aforementioned primers, books and commentaries, the Hanafi School also possesses many works on *fatawa* (pl. religious verdict) that are approved and have become widespread among the scholars; and perhaps the most famous of these are:

1. Al-Fatawa al-Walwajiyah of Abdur Rasheed b. Abi Hanifah al-Walwaji (d 540 AH).

2. Al-Sirajuyyah of Siraj al-Deen Ali b. Uthman b. Mohammed al-Tamimi al-Awshi (d. 575 AH).

3. Al-Khaniyyah of Qadhi Khan al-Hasan b. Mansoor (d. 592 AH).

4. Al-Bazaziyyah of Mohammed b. Mohammed al-Bazazi (d. 827 AH).

5. Al-Hindiyyah which was compiled by a group of scholars at the bequest of the grand scholar Sultan Mohammed Aurangzeb (d. 1118), and includes *fatawa* that were given by erudite jurists as well as rare rulings that were agreed upon among the scholars.

6. Al-Fatawa al-Hamidiyyah of al-Hamid b. Ali b. Ibrahim al-Amaadi (d. 1171 AH), which was abridged and edited by Ibn ‘Abideen in his famous work *al-Uqood al-Durariyyah Tanqeeh al-Fatawa al-Hamidiyyah*.



Chapter Five

The Most Frequently Referenced Nomenclature of the School

The Hanafites, like other schools, possess nomenclature that is unique to them which they use in their texts. Therefore it is incumbent on any student who wants to peruse their works to be familiar with their nomenclature and abbreviations so that they can understand them in the correct context and as intended by the exponents of the school.

In this section we will identify their nomenclature based upon the following order:

Firstly: Nomenclature used in relation to the Hanafi scholars

These are divided into words and abbreviations. The words are:

Al-Imam or Imam al-Aa'zam: (The greatest Imam) in reference to Imam Abu Hanifah (may Allah have mercy upon him).

Al-Imam al-Thani: (The Second Imam) in reference to Abu Yusuf.

Al-Imam al-Rabbani: (The Godly Imam) in reference to Mohammed b. Hasan al-Shaybani.

Al-Shaykhayn: (The Two Shaykhs) in reference to Imam Abu Hanifah and Abu Yusuf.

Al-Tarfaan: in reference to Imam Abu Hanifah and Mohammed b. Hasan.

Al-Sahibaan: in reference to Abu Yusuf and Mohammed b. Hasan.

A'imatuna al-Thalatha: in reference to Abu Hanifah, Abu Yusuf and Mohammed.

Al-Salaf: in reference to all scholars between Abu Hanifah and Mohammed b. Hasan.

Al-Khalaf: in reference to those after Mohammed b. Hasan until Imam al-Halwani (d. 448 AH).

Shaykhuna: if mentioned in *al-Durr al-Mukhtar* then it refers to Khair al-Deen al-Ramli.

Al-Muta'akhiroun: in reference to the scholars in the period from Imam al-Halwani (d. 448 AH) to al-Hafidh al-Deen al-Kabeer al-Bukhari (d. 693 AH).

Al-Sadr al-Awwal: refers to the first three generations of this ummah (nation) who are mentioned as the best generations according to prophetic tradition.

Shams al-A'immah: when used alone refers to al-Sarakhsi (d. 490 AH) author of *al-Mabsoot*.

Al-Hasan: when mentioned in the books of *fiqh* refers to al-Hasan b. Ziyad al-Lulu'i. If mentioned in reference to books on *tafseer* (Quran'ic exegesis) it refers to al-Hasan al-Basri.

Al-Hakim al-Shaheed: refers to Mohammed b. Mohammed b. Ahmed al-Marwazi al-Balkhi (d. 334 AH) author of *al-Kafi*.

Al-Sadr al-Shaheed: refers to Umar b. Abdul Aziz b. Umar b. Mazah (d. 536 AH).

Al-Hussam al-Akhsikathi: refers to Mohammed b. Umar b. Hussam al-Deen (d. 644 AH) author of *al-Muntakhab fi al-Usool*.

Sadr al-Shari'ah: when mentioned alone refers to Ubaid Allah b. Mas'ood b. Mahmoud al-Mahboubi (d. 745/747 AH) author of the exegesis on *al-Wiqayah*.

Al-Sadr al-Akbar or Burhan al-A'immah: refers to Abdul Aziz b. Umar b. Mazah.

Al-Sadr al-Sa'eed: refers to Taj al-Deen Ahmed b. Abdul Aziz b. Umar b. Mazah.

Taj al-Shari'ah: refers to Mahmoud b. Ahmed b. Ubaid Allah al-Mahboubi (d. 673 AH) author of *al-Wiqayah*.

Burhan al-Islam: refers to Radhi al-Deen Sarakhsi Mohammed b. Mohammed (d. 544 AH).

Fakhr al-Islam: refers to 'Ali b. Mohammed Bazdawi Abu al-'Usr (d. 482 AH).

Mufti al-Thaqalayn: refers to Abu Hafs Umar b. Mohammed al-Nasafi (d.537 AH) author of *Mandhoomah al-Fiqh*.

Al-Ustadh: refers to Abd Allah b. Mohammed b. Ya'qub al-Harithi al-Subathmuwni also known as al-Faqih al-Harithi (d. 861 AH).

Al-Muhaqiq: when mentioned alone refers to the later day scholar Ibn al-Homam (d. 861 AH).

Qadhi Khan: refers to al-Hasan b. Mansoor b. Mahmoud al-Farghani (d. 592 AH).

Imam al-Haramain: refers to Abu Muzaffar Yusuf al-Jurjani al-Qadhi.

Imam al-Huda: refers to the jurist Abu Layth Nasr b. Mohammed b. Ahmed al-Samarqandi (d. 373/393 AH).

Imam Zada: refers to Mohammed b. Abi Bakr al-Juwghi (d. 573 AH) author of *Shari'ah al-Islam*.

Malik al-Ulama: refers to 'Alaa ul-Deen Abu Bakr b. Mas'ood al-Kaasaani (d. 587) author of *Bada'i' al-Sana'i'*.

As regards the most notable abbreviations they are:

(س) Refers to Abu Yusuf as stated by al-Mowsily in *al-Mukhtar li al-Fatawa* and al-Nasafi in *al-Wafi* and *Kanz al-Daqa'iq*.

(ز) Refers to Imam Zufar as stated by al-Mowsily in *al-Mukhtar li al-Fatawa* and al-Nasafi in *al-Wafi* and *Kanz al-Daqa'iq*.

(م) Refers to Mohammed b. Hasan al-Shaybani as stated by al-Mowsily in *al-Mukhtar li al-Fatawa* and al-Nasafi in *al-Wafi* and

Kanz al-Daqa'iq.

(سم) Refers to Abu Yusuf and Mohammed b. Hasan as stated by al-Mowsily in *al-Mukhtar li al-Fatawa*.

(ح) Refers to al-Halabi (d. 1190 AH) as stated by Ibn 'Abideen in *Hashia*.

(ط) Refers to al-Tahtaawi (d. 1231 AH) as stated by Ibn 'Abideen in *Hashia*.

Secondly: Nomenclature used in relation to penned works

Masa'il al-Usool / Dhahir al-Riwayah: refers to the rulings narrated down from Imam Abu Hanifah, Abu Yusuf and Mohammed b. Hasan and occasionally it could encompass Zufar, al-Hasan b. Ziyad and other direct students of Imam Abu Hanifah; however it is usually used for the first three or one of them. These rulings were compiled by Mohammed b. Hasan in his six works which are: *al-Asal*, *al-Ziyadaat*, *al-Jami' al-Sagheer*, *al-Jami' al-Kabeer*, *al-Siyar al-Sagheer*, *al-Siyar al-Kabeer*. These were called *Dhahir al-Riwayah* because they were narrated from Mohammed b. Hasan by trustworthy scholars making their veracity conclusive either through means of being *mutawatir* or *mashoor*.

Al-Nawadir: refers to the issues that have been narrated from Imam Abu Hanifah and his students, but which are not from the *Dhahir al-Riwayah*. These were collated in other works of Mohammed b. Hasan such as *al-Kaysaniyaat*, *al-Ruqayyaat*, *al-Haruniyyaat*, *al-Jurjaniyaat*; or they were collated in the works of other scholars such as the *Amali* of Imam Abu Yusuf and *al-Mujarrad* of Hasan b. Ziyad. These are secondary to the *Dhahir al-Riwayah* works because they were not narrated from Mohammed b. Hasan in the same way *Dhahir al-Riwayah* works were.

Masa'il al-Fatawa / al-Nawazil / al-Waqi'aat: refers to derived

laws arrived at by latter-day scholars regarding issues for which no ruling exists from earlier scholars.

Al-Asal: refers to al-Mabsoot of Mohammed b. Hasan if mentioned exclusively, as it is the first work that was penned of the *Dhahir al-Riwayah* collection.

Al-Kitab: refers to the *Mukhtasar al-Qudoori* if mentioned exclusively by Hanafi jurists.

Al-Muheet: refers to *al-Muheet al-Burhani* of Burhan al-Deen al-Bukhari, if mentioned exclusively.

Al-Mabsoot: refers to Mabsoot al-Sarakhsi if mentioned exclusively

Al-Mutoun al-Thalatha: refers to *Mukhtasar al-Qudoori* (d. 428 AH), *Matn al-Wiqayah* of Taj al-Shari'ah al-Mahboubi (d. 673 AH), and *Kanz al-Daqa'iq* of Abi l-Barakat al-Nasafi (d. 710 AH).

Al-Mutoun al-Arbac: refers to the previous three and *al-Mukhtar* of Abi l-Fadl Abd Allah b. Mahmoud al-Mowsily (d. 683 AH) or *Matn Majma' al-Bahrain* of Muzaffar al-Deen Ahmed b. Ali al-Baghdadi (d. 694 AH).

Thirdly: Nomenclature used in relation to Tarjeeh (preferred opinion)

The nomenclature that is used to identify which statement is given preference or selected.

They include the following terms:

Wa alayhi l-Fatwa

Wa bihi yuftaa

Wa bihi nakhuz

Wa alayhi l-i'timaad

Wa alayhi ‘amal al-yawm

Wa huwa l-sahih

Wa huwa l-asahh

Wa huwa l-dhahir

Wa huwa l-azhar

Wa huwa l-mukhtar

Wa alayhi fatwa mashaykhina

Wa huwa l-ashbah

Wa huwa l-awjah

These words are similar in meaning and some of them are more emphatic than others. For example, the use of the term ‘*fatwa*’ is more emphatic in meaning than the terms *al-sahih*, *al-asahh*, *al-ashbah*, and the term ‘*wa bihi yuftaa*’ is more emphatic than the terms ‘*al-fatwa alayhi*’ and *al-asahh* is more emphatic than *al-sahih*¹.



¹ Rasm al-Mufti (1/38)

Imam Malik ibn Anas'

School of Thought

All praise is for Allah; and as to what follows:

I have read the treatise entitled “An Introduction to the Maliki School of Thought” and have found it to be a great and sincere effort due to the nature of its beneficial and structured content, the provision of references and their accuracy; and the accurate research methodology employed throughout. My congratulations to the researcher on presenting this beneficial work in good style and content.

And Allah is the Guarantor of Success

Dr Bumia Mohammed al-Saeed*

* A Maliki jurist with an expertise in numerous sciences, he has lectured at various universities including the Sharjah University in UAE and Nouakchott University in Mauritania, as well as others. He has participated in several conferences and workshops both inside Kuwait and abroad, presenting on a variety of subjects including Islamic Law and Legal Theory, as well as Arabic language, among others. He has authored numerous works most of which are unpublished, however some of those that have been published include: *Saba'ik al-Lujayn bi Jam Andhaam al-Lamiyah wa Tara Ibn Zayn* and *Al-Badiya fi Usool al-Fiqh* of Shaikh Mohammed al-Mami (editor), and *Ma'rifat al-E'jaaz li l-Shaykh Sidya Baba* (editor).

Imam Malik ibn Anas' School of Thought

The Maliki School of Thought is the second of the four approved Islamic schools by virtue of the date it was founded. Its name originates from the founder, the great scholar of al-Madinah, the Imam of Dar al-Hijrah (land of migration) Malik b. Anas al-Asbahi (may Allah have mercy upon him) and it is the most authentic and balanced of the schools in issues pertaining to creed and rulings, as stated by Shaykh al-Islam Ibn Taymiyyah (may Allah have mercy upon him):

“The School of the Prophet’s City, The Land of the Sunnah, The Land of Migration, The Land of Support. In this land, Allah prescribed for his Messenger the traditions and laws of His religion. To this land did the Muhajireen migrate for the sake of Allah and His Messenger, to the Land of Faith, where the Ansar had settled before them. It is the school present from the time of the Sahabah and Tab’ieen and those that followed them. The most correct school of all cities, east and west, in its fundamental and substantive principles”.

This discourse will focus on six aspects as follows:

Chapter One: Biography of the Founder

Chapter Two: The Development of the School and its Historical Phases

Chapter Three: The Fundamental Principles of Derivation in the School

Chapter Four: The Sub-schools within the Maliki School

Chapter Five: The Most Notable Works of the School

Chapter Six: The Most Frequently Referenced Nomenclature of the School

Chapter One

Biography of the Founder

Firstly: His Name, Sobriquet and Birth

He is Abu Abd Allah Malik b. Anas b. Malik b. Abi 'Aamir b. Amr b. Ghaymaan b. Khuthayl b. Amr b. al-Harith - Dhu Asbah - al-Himyari al-Asbahi al-Madani.

Al-Himyari refers to one of the Arab royal tribes known as al-Himyar which settled in Yemen. And Dhu Asbaha, to whom Imam Malik ascribes himself is one of the sons of Qahtaan, however Asbah became known as a tribe so he was ascribed to it.

Secondly: His Birth and Upbringing

Imam Malik was born in the year 93 AH during the caliphate of Sulaiman b. Abd al-Malik b. Marwan in the village of Dhi Marwa, 160 kilometres north of al-Madinah - the refuge of faith, the point of descent of revelation, and the capital of the first Islamic caliphate.

His mother was 'Aliyah b. Shareek al-Azdiyyah who was known as a pious person who revered sacred knowledge and its bearers, as we will speak about shortly.

Imam Malik grew up in a noble household, known for its admiration of the sacred sciences; contribution to the field of *Hadith* and study of the *Fatawa* (legal edicts) of those preceding them till the time of the Prophet (peace and blessings be upon him). Indeed, the grandfather of the Imam, Malik b. Abi Aamir (d. 94 AH) was a scholar amongst the senior *Tabi'een* (followers). He narrated *Hadith* from numerous companions including Umar, Uthman, and Aishah (may Allah be pleased with them) and his children narrated on his authority, including Anas the father of Imam Malik and Abu Suhail Nafi b. Malik (d. 140 AH) his other son who was a teacher of the great

Imam Ibn Shihab al-Zuhri. However, it appears that Imam Malik's father, Anas b. Malik did not engage himself in the narration of *Hadith*, and it is not authentically established that Imam Malik narrated from him.

Imam Malik's brother, al-Nadr b. Anas was a very dedicated student of knowledge and studied with numerous scholars to the extent that when Imam Malik started seeking knowledge, he would be identified as 'the brother of al-Nadr. However before long, due to his diligence, Imam Malik exceeded his brother in reputation and people began to identify his elder brother as the 'brother of Malik'. Without a doubt, such families wholly devoted to the sacred sciences are the catalysts for their children to seek knowledge, and Imam Malik proved to be suited and worthy of this responsibility.

Thirdly: Imam Malik's Seeking of Knowledge

The environment of al-Madinah, where Imam Malik grew up, was one immersed in piety and sacred knowledge. He set foot on the sacred path from very early on in his life as Imam Malik's student Ibn Wahb narrated from him: "...*I would come to Nafi, the freed slave of Ibn Umar while I was still a young child.*"

After completing his memorisation of the Noble Qur'an as was customary for students in the early period of Islam, Imam Malik suggested to his family that he would like to attend scholarly circles to study their knowledge. He found in his mother great encouragement as he himself stated based on the narration of Mutarrif: "Malik said: *"I told my mother I want to go to pen down knowledge. She said to me, 'Come and dress in the clothing of knowledge.' She then dressed me in a robe, placed a tall cap on my head and tied a turban around it, then said: 'Off you go, write now.'"* And Imam Malik also said: *"My mother would tie the turban on my head and say: 'Go now to Rabi'a and learn from his character, before you learn his knowledge.'"*

Imam Malik exerted himself in seeking knowledge in different

areas of expertise such as *Hadith* and *Fiqh*, and he attended the circles of numerous scholars and traditionists (*Muhadditheen*). He penned down volumes of knowledge as Ibn Kinana narrates from him: *"I used to have boxes of books that have been lost; for them to have remained with me is more beloved to me than my family and wealth."* And he also said: *"I have penned down with my own hand one hundred thousand hadith."*

Imam Malik remained studying with the renowned scholars of al-Madinah until he graduated at their hands and was recognised by all as an independent and qualified scholar, however he did not sit to teach hadith or issue legal edicts (*fatwa*) until the greatest scholars attested to his knowledge as his student Abu Mus'ab relays from him: *"I did not issue legal edicts until seventy scholars attested to my ability in doing so"*. And Khalaf b. Amr narrates: *"I heard Malik say: 'I did not start issuing fatwa until I asked those who were more knowledgeable than me if they felt I was qualified to do so. I asked Rabi'a and Yahya b. Sa'eed and they ordered me to do so.' I said to him, what if they forbade you from doing so? He said: 'I would have refrained from doing so as it is not befitting for a person to see himself capable of something without asking those who are more knowledgeable than he is.'"*

Fourthly: Imam Malik's Most Notable Teachers

Imam Malik was very strict in his choice of teachers and those that he sought knowledge from. Ibn Uyainah states: *"There was no one more critical in choosing teachers, and more aware of their abilities."* Ibn Wahb narrates from Imam Malik the following:

"I have met in this land such pious people that if they were asked to pray for rain, it would rain; they have heard much knowledge and Hadith, but I do not narrate from any of them. They used to restrain themselves through the consciousness of Allah and ascetism, however this affair - prophetic narration and issuing legal edicts - requires people who have piety, scrupulousness, skill, precision, knowledge

and understanding so they know what is emanating from their minds and what will they will encounter the following day.”.

Due to the extreme diligence and stringent conditions that Imam Malik employed in choosing his teachers, the scholars of *Hadith* made a rule of thumb that “*Everyone Imam Malik narrates from is trustworthy.*” Despite these conditions, Imam Malik still had a very large number of teachers, exceeding nine hundred in number. Three hundred of these were from the *Tab'ieen* (followers) and six hundred were from the following generation. Of these teachers, the ones that had the greatest impact on Imam Malik, and with whom he spent most of his time studying with, were:

Nafi the freed slave of Ibn Umar (d.118 AH), Mohammed b. Shihab al-Zuhri (d.124 AH), Mohammed b. Munkadir (d.130 AH), Abu l-Zinaad Abd Allah b. Zakwaan (d. 130 AH), Ishaq b. Abd Allah b. Abi Talha (d. 132), Abd Allah b. Abi Bakr b. Hazm (d.135 AH), Zayd b. Aslam (d. 136 AH), Yahya b. Sa'eed al-Ansari (d. 143 AH), Hisham b. Urwah (d.145 AH), and Abd Allah b. Yazid b. Hormuz (d. 148 AH) whom Imam Malik studied with for over thirteen years.

Fifthly: Imam Malik's Most Notable Students

Imam Malik had a multitude of students from various lands including Hejaz, Iraq, Khurasan, Yemen, Greater Syria, Egypt, the Maghrib, and Andalus. The great Hafidh Abu l-Hasan Ali b. Umar al-Daraqutni stated in his work - *The Narrators from Malik* - that around one thousand people narrated from him. In fact, we find that owing to his stature and deep understanding of knowledge, some of Imam Malik's own teachers narrated from him, including Yahya b. Sa'eed and his uncle Abu Suhail. Many of his contemporaries also narrated from him, including the famed scholars al-Awza'ie (d. 157), Layth b. Sa'ad (d. 175 AH), Shu'bah b. Hajjaj (d. 160 AH), and the two Sufyans.

From the most notable students of Imam Malik were Mohammed b.

Hasan al-Shaybani (d. 189 AH), Abdur Rahman b. Qasim (d. 191 AH), Abd Allah b. Wahb (d. 197 AH), Ma'an b. Eisa (d. 198 AH) Ashhab b. Abdul Aziz al-Qaysi (d. 201 AH) Abd Allah b Abdul Hakam (d. 214 AH), Asad b. Furat (d. 213 AH), Abdul Malik b. Majashoon (d. 214 AH), Abd Allah b. Maslama al-Qaynabi (d. 221 AH), Asbagh b. Faraj (d. 225 AH), Yahya b. Yahya al-Laythi (d. 234 AH), and Abu Mus'ab Ahmed b. Abi Bakr al-Zuhri (d. 242 AH), the last of his trustworthy students who narrated from him the *Muwatta*.

Sixthly: Imam Malik's Writings

The most famous work of Imam Malik that has reached us, is his *Muwatta*. However, he wrote numerous treatises and letters to his contemporaries, of which the most notable are:

- 1) A letter to Abd Allah ibn Wahb defining predestination (*Qadr*) and refuting the *Qadariyyah*.
- 2) A treatise on the exegesis of difficult words in the *Qur'an*.
- 3) A letter on judgments that he sent to a group of judges.
- 4) A letter of *fatawa* to Abu Ghassan Mohammed b. Mutarrif.
- 5) A letter to Layth b. Sa'ad on the consensus of the people of al-Madinah.

Seventhly: The Praise of the Scholars Regarding Imam Malik

The status and acclaim that Imam Malik received from the scholars regarding his leadership in the sciences of *Fiqh* and *Hadith* are indisputable. Some of what was said with regards to him we have presented below:

Imam Ibn Shihab al-Zuhri (may Allah have mercy upon him) said to him:

"You are one of the vessels of knowledge, indeed you are a fine

depository of knowledge”.

Imam Abdur Rahman b. Mahdi (d. 198 AH) (may Allah have mercy upon him) said:

“I have never set eyes upon a person more awe-inspiring, nor more complete of intellect, and strict in their piety, than Imam Malik.”

Imam Shafi'i (may Allah have mercy upon him) said:

“When the scholars are mentioned, Malik is the star. None of them reached the level of Malik in his knowledge, memorisation, mastery or preservation and whoever wants to obtain authentic narrations then go to Malik.” He also said: *“Malik b. Anas is my teacher and there is no teacher that I am indebted to more than Malik.”*

The statement of Imam Ibn Sa'ad (d. 230 AH) (may Allah have mercy upon him):

“Imam Malik was trustworthy, precise, scrupulous, sagacious, knowledgeable, and a proof.”

The statement of Imam Ahmed b. Hanbal (may Allah have mercy upon him)

“Malik is one of the masters among the people of knowledge and he is a leading authority in Hadith and Fiqh.”

From the poetical verses that have been coined in praise of him are those of the great Imam Abd Allah b. al-Mubarak who chanted:

صُمُوتٌ إِذَا مَا الصَّمْتُ زَيْنُ أَهْلِهِ ... وَفَتْاقُ أَبْكَارِ الْكَلَامِ الْمُخْتَمِ
وَعَى مَا وَعَى الْقُرْآنُ مِنْ كُلِّ حِكْمَةٍ ... وَنَيْطَتُ لَهُ الْأَدَابُ بِاللَّحْمِ وَالْدِّمِ

Another person wrote the following regarding the comportment and dignity that Allah had blessed Imam Malik with:

يَدْعُ الْجَوَابَ فَلَا يَرِجَعُ هَيْبَةً ... وَالسَّائِلُونَ نَوَاصِ الْأَذْقَانِ
أَدَبُ الْوَقَارِ وَعِزُّ سُلْطَانِ الثَّقَى ... فَهُوَ الْمُطَاعُ وَلَيْسَ دَا سُلْطَانِ

Eighthly: Imam Malik's Passing Away

Imam Malik passed away on the morning of Sunday 14th Rabi al-Awwal in 179 AH at age 85. He was buried at the Baqi' Graveyard in the City of the Prophet (peace and blessings be upon him).



Chapter Two

The Development of the School and its Historical Phases

The Maliki School of Thought went through numerous phases of development from the time of its founding to its complete maturity. Each of these phases came with its own unique features that distinguish it from the previous. We can summarise these into three main phases:

The Founding and Construction of the School

The Development and Expansion of the School

The Stability and Continuity of the School

The First Phase: The Founding and Construction of the School (110 - 300 AH)

The founding phase of this school started from the time Imam Malik b. Anas (may Allah have mercy upon him) assumed his seat to issue *Fatwa* and gained public acceptance of his leadership; and lasted until the end of the third century, during which many of Imam Malik's students and their students continued to serve the school. Among them was the great scholar of Iraq, Qadhi Isma'il b. Ishaq (d.282 AH), author of *al-Mabsoot*, the last of the Maliki *Fiqh* works to be authored in this stage.

This phase is distinguished by the verification, collation, organisation and cataloging of Imam Malik's narrations and rulings as well as the juristic rulings of some of his students. The most important works that were authored in this period, known as the four canonical works, are:

Al-Mudawwanah, al-Wadiha, al-'Utbiyyah, and al-Mawwaziyah.

The Second Phase: The Development of the School (301 - 600 AH)

This phase was overseen by some brilliant Maliki scholars who took the methodology of those preceding them and drew up substantive laws, applied them, selected the most preferred positions, and then contributed to them becoming widely known. We can therefore say, the school developed in the full sense of the word, from its branching out to the selection and application of the dominant or preferred positions within the school.

This period started around the beginning of the fourth century *Hijrah*, and ended towards the beginning of the seventh century, with the passing away of Ibn Shaas in 610 or 616 AH.

The distinguishing factors of this phase are the importance and inclination put upon the verification and redaction of the books, as well as compilation of narrations and opinions preceeding this period in time. These works underwent numerous stages of editing, authentication, verification, evaluation, and summarisation, before being arranged according to subject matter of jurisprudence. In other words, this period represented a deep study and evaluation of the works from the first phase of the school.

Among the most notable summary works of this phase are *al-Tafree'* of Ibn al-Jallab (d. 378 AH) and *Tahdheeb al-Mudawwanah* of al-Baradhi'i (d. 438 AH)

The Third Phase: The Stability and Continuity of the School (601 AH - present)

This phase starts at the beginning of the seventh century with the completion of *Mukhtasar Ibn Hajib al-Far'i* known as *Jami' al-Ummahat* and it continues till the present day. It brought forth the appearance of many epitomes, commentaries, and super-commentaries; usually a sign that appears when the scholars of a school reach a level

of scholarly certainty. Therefore, the principles and juristic rulings of the scholars preceding them leave no room for personal *Ijtihad* (juristic exertion), rather only for the writing of summaries or commentaries.

This phase witnessed a blending of the scholarly opinions held by the independent sub-schools, fusing into one melting pot. This in turn, resulted in the authoring of books that represented the main school without prejudice to sub-schools. This consolidated the various scholarly opinions and helped to dissolve the root differences, except those that came through the individual *Ijtihad* of scholars, even within the same juristic school.



Chapter Three

The Fundamental Principles of Derivation in the School

The Maliki School is regarded as having a larger corpus of principles of derivation than any of the four schools, despite Imam Malik (may Allah have mercy upon him) not explicitly detailing the principles he depended upon to derive rulings. However, he did provide a general outline of his methodology in the statement that his student Abd Allah b. Wahb narrated from him: *“The rulings that are used in the affairs of the people are of two types: that which is to be found in the Book of Allah or in the rulings of the Sunnah, is an obligatory ruling, and it is correct. And that which is given after the exertion of a qualified scholar, which is his opinion, it may be that he is correct.”*

This quote of Imam Malik (may Allah have mercy upon him) shows that the principles of derivation according to him are therefore divided into two types. Principles based upon transmitted textual proofs, and principles based upon rational proofs reached through *ijtihad*.

We are able to further understand the details of Imam Malik's principles of derivation upon researching his famous work al-Muwatta and investigating the rulings and *fatawa* that he conveyed. In reality, we observe eleven fundamental principles of derivation in the school, as follows:

First: The Holy Qur'an

The Book of Allah and the Prophetic *Sunnah* is organised with consideration given to clarity in meaning, starting with the *nass* (unequivocal texts) then the *dhahir* (apparent texts) and then the *mafhum* (implicit meanings). In deriving rulings, the Maliki School

also accepts the meanings of verses that occur in the different modes of Qur'anic recitation, as demonstrated by Imam Malik in numerous matters of *Fiqh* in his book.

Second: The Prophetic Sunnah

The *mutawatir* (mass-transmitted), *mashoor* (well-known) and *aahad* (solitary-transmitted) narrations.

It is well known that the Maliki School also accepts the *mursal* narrations as Imam Malik has compiled many *mursal* narrations in his *Muwatta*, and used them as proof. However, he required that every *mursal* narration be from a trustworthy person who is fully aware of what he narrates, and only ever narrates *mursal* narrations from those who are trustworthy.

Third: Ijma' (Consensus)

The Maliki School of Thought holds that the consensus of the qualified *mujtahid* scholars of any particular period of this *ummah*, with regards to a ruling, is binding proof. Therefore, the consensus of the *sahabah* (may Allah be pleased with them) is binding proof upon those that came after them. In the same way, the consensus of the *tabi'een* in their time, is a proof on those after them. It is also acceptable for the consensus to be supported by proofs from the Qur'an and *Sunnah* or from *qiyas* (scholarly analogy).

Fourth: Qiyas (Scholarly Analogy)

Imam Malik (may Allah have mercy upon him) employed the use of analogy based on rulings that are found in the Qur'an or *Sunnah*, and also analogy of secondary laws derived from principal laws. This is what was meant by his statement earlier in the chapter: “*And that which is given after the exertion of a qualified scholar which is his opinion...*”

Imam Malik and his students expanded the use of analogy as they did not restrict it to simply making analogy on rulings that occurred in the texts, rather they also exercised analogy on secondary laws that had been derived by the application of analogy in the first instance. This way they derive substantive laws from secondary laws and rulings that have been deduced by the application of analogy.

Some scholars have attributed to Imam Malik his preference for analogy over *khbar al-wahid* (solitary reports) if they contradict each other with no way of harmonising between them. After verification, it is clear that this is incorrect, and it does not agree with the position of Imam Malik and his known preference and esteem for the *Sunnah* and narrations; rather the correct position is that he prefers *Hadith* reports over analogy.

There is no difference of opinion among the four imams of the schools of thought with regards to the four previous fundamental principles of derivation as Qadhi Abu Bakr b. Arabi states: “*The principles of deriving laws are five; four of these are agreed upon by the Imams: Qur'an, Sunnah, Ijma' (consensus), researching and exertion of a qualified scholar...*”

Fifth: The Practice of the Madinite Community

This principle of derivation is unique to Imam Malik and none of the other founding Imams employed it. Imam Malik used it as a proof in numerous rulings. The correct definition of this principle is: *The agreement of all or the majority of scholars residing in al-Madinah at the time of the sahabah or the tab'ieen with regards to a particular issue.*

It is well known that Imam Malik employed this principle as a proof in issues that were known by certainty, such as the reporting of the measurement of the *saa'* and *mudd*, as well as the recitation of *aadhan* (the call to prayer), but not in the issues where there is opinion or *ijtihad* as the poet has stated:

وَأَوْجِبْنَ حُجَّتَ الْمَدَنِيِّ ... فِيمَا عَلَى التَّوْقِيفِ أَمْرُهُ بِنِي

This principle of derivation - if clear and connected - is held to be stronger by Imam Malik than *khavar al-wahid* (solitary reports) when there is contradiction, because he equalizes between it and that which has been narrated through *mutawatir* (mass-transmitted) reports.

Sixth: The Statement of A Sahabi (Companion)

The correct definition of this principle is: *The statement of the companion made by means of ijtihad, which was not opposed by any of the other companion, and did not become widely known, or it is not known of it becoming widely known.* However, if the statement became well known and nobody opposed it, then it would be regarded as a consensus (*ijma'*), or it would be regarded as simply a form of proof but not consensus, due to the variant opinions regarding silent consensus.

The well known position of Imam Malik which can clearly be seen by his statements in the *Muwatta*, is the acceptance without limitation of the statements of *companion* as unequivocal proof. Imam Malik (may Allah have mercy upon him) also permits the restriction of apparent texts by the statements of a *companion* if it was evident and widely known, without having anyone objecting to it. For this reason, we find that Imam Malik frequently accepted the *fatawa* of the *companions* (may Allah be pleased with them) and regarded it as being from the *Sunnah* - based upon other factors that are well known - and Allah made Malik a leader of *Ahl al-Sunnah* in his time and an exemplar who served as a source of guidance for the people.

Seventh: The Divine Laws of Previous Nations

The correct definition of this principle is: *A law from any of the previous prophets (peace and blessings be upon them), corroborated by either a verse of the Holy Qur'an or the authentic Sunnah, and there is*

no proof in Islamic Law that it has been abrogated or approved.

It is known through the practice of Imam Malik in his *Muwatta* and other places, that he approved of this principle of derivation and held on to it and there is no difference of opinion with regards to his using it as a proof.

Eighth: Masalih al-Mursala (Considerations of Public Welfare)

Masalih al-Mursala: *The issues of public interest that have not been prescribed or invalidated.* In other words, the issues that are not regulated through textual evidence insofar as prescribing them or forbidding them, rather nothing was mentioned about them.

Imam Malik employed the principle of public welfare consideration in matters where there were no textual evidence, as long as there was no other source that obligated following. However, the application of public welfare consideration is confined by the following conditions:

1) It must be in concordance with the aims of Islamic Law so that it does not negate any of its principles nor any of its unequivocal proofs.

2) It should be from the things that are understandable and logical such that if it is presented to the people of sound intellect, they are capable of accepting it, and it cannot be used with respect to worship/devotional related matters.

3) It preserves a matter of necessity or it takes away implicit constriction in the deen.

4) That the benefit of welfare from the consideration should be in the interest of the entire community, not a specific group or limited to some.

5) That the person who is assessing the consideration of public welfare should be a *mujtahid* who possesses outstanding Islamic behaviour, so that his mind and disposition do not permit him to go against it.

Ninth: Istihsaan (Juristic Discretion)

The discretion that Imam Malik approved of in his *Fiqh* and *Fatawa* is to choose and apply the stronger of two distinct proofs, such as when we have an occurrence that oscillates between two principles. One has a stronger similarity and is more established in proof, and the second principle is weaker with a distant proof, so the jurist exercises his discretion, departing from the use of the immediate analogical proof, and to give preference to the seemingly weaker proof, through empowered derivation.

This principle is applied in cases where the use of analogy without restriction would contradict a prevailing custom, or block a prevailing benefit, or be a cause of detriment, or cause a hardship.

Imam Malik relied on the principle of discretion and he made numerous rulings based upon it. It is narrated that he said: “*Discretion is nine-tenths of knowledge.*”

Therefore, if Imam Malik came across a juristic principle or an analogical ruling that if practised would cause detriment to the consideration of public welfare or bring about harm, he moderates it with the application of scholarly discretion, as an exception to the principle, and a restriction to the rule and what it entails. This is done while giving preference to public welfare (*masalih al-mursala*) based upon his understanding of the divine aims of the Lawgiver, not based upon personal interest and whims.

Tenth: Sadd al-Dhara'i (blocking of the means)

The definition of this principle is: *Forbidding that which is permissible so as not to fall into that which is impermissible.* This is because the means to an end take the ruling of the intended result, so in the same way that which facilitates an obligation is obligatory; that which facilitates a prohibition is prohibited.

The means to corruption are divided into three categories:

The First: That in which there is a consensus with regards to its being forbidden, such as swearing at an idol in front of someone who is known to swear back at Allah.

The Second: That in which there is a consensus with regards to its permissibility, such as the farming of grapes. It is not forbidden owing to the fear that they will be used to make wine.

The Third: That in which there is difference of opinion as to whether to block it or not, such as sale of credit. For example, the person who sells some merchandise for ten dinars giving a month's credit then he buys them for five dinars before the end of the same month. This is a means to usury and was prohibited by Imam Malik.

Imam Malik applied this principle in most of the matters of *Fiqh*, until it was thought that this principle was practiced solely by him. However, Imam Malik was not the only proponent of this principle, rather it is practised by all of the schools, but Imam Malik and his students applied it far more than the others.

Eleventh: al-Istishaab (Presumption of Continuity)

Presumption of Continuity is divided into two categories:

The First: The presumption of innocence which refers to the continuity of sanctity until proof establishes otherwise, because the origin in rulings is freedom from blame with the onus of proof being on the plaintiff.

The Second: The presumption of continuity in Islamic rulings, that is the continuity of affairs as established by Islamic Law due to its means being present, such as the statement of the jurists: *"The existing state of something shall continue to exist unless proof establishes otherwise."*

Even though Imam Malik did not explicitly state anywhere his application of this principle, it can clearly be observed in a great number of *fatawa* he made. When he was asked a question, he would

often respond with: “*The Prophet (peace and blessings be upon him) nor his sahabah did that.*” Or he would say: “*I never saw anyone doing that.*” This leads us to understand that if nothing is found in Islamic Law that establishes something, then it remains in its original state free from any blameworthiness.



Chapter Four

The Sub-schools within the Maliki School

The students of Imam Malik, were divided by Qadhi Iyadh into six categories based on their geographical locations and they are: The People of al-Madinah, The People of Iraq and the East, The People of Hejaz and Yemen, The People of Kairouan, The People of Andalus and the People of the Levant.

The school had a widespread reach across numerous lands, with varying environments, customary practices and understanding, coupled with the various approaches of Imam Malik's students in their dedication to the principles of the school, and to following their teacher in his *Fiqh* and *Fatawa*. This resulted in the foundation of numerous sub-schools within the Maliki School of Thought. Each of these sub-schools had their own unique pedagogy, which we define as follows.

First: The Madinite Sub-school

The Madinite School is the mother of all schools and it was represented by erudite Madinite students of Imam Malik such as:

Uthman b. Eisa b. Kinana (d.186 AH) who was one of the closest students of Imam Malik, and assumed the chair of Imam Malik's circle upon his passing.

Abd Allah b. Nafi al-Sa'igh (d. 186 AH) who took the place of Uthman b. Eisa upon his passing.

Al-Mugheerah al-Makhzumi (d. 188 AH) the Mufti of al-Madinah (jurisconsult) after Imam Malik.

Abdul Malik b. Majashoon (d. 214 AH) and al-Mutarraf b. Abd Allah al-Hilali (d. 220 AH), the most famous students who spread the teachings of Imam Malik and who surpassed their contemporaries in their rulings and opinions.

Abd Allah b. Wahb (d. 197 AH) from Egypt and Abdul Malik b. Habeeb (d. 238 AH) from Andalus also supported this sub-school and followed its methodology.

This sub-school remained strong in its activities and its message spread as scholars from Africa, Andalus, Egypt, Iraq, and other lands travelled seeking to benefit from it. This went on until all the schools of *Sunnah* during the ruling era of the *Ubaydi* Dynasty in the middle of the fourth century began facing turmoil, which led to the freeze of activities conducted by the people of *Sunnah* in al-Madinah. A few centuries later, the light of the school was reignited, and it re-established its prominent place and increased its activities with the appearance of the chief judge of al-Madinah, Ibn Farhoon (d. 799 AH).

This sub-school distinguished itself through its strict adherence and dependence upon the authentic *Hadith* after the Qur'an as a primary source of rulings, without taking into consideration whether the actions of the *sahabah* and *tabi'een* agreed with it or not.

Second: The Egyptian Sub-school

The Egyptian Sub-school was the first to be established after the Madinite School, owing to the efforts of Imam Malik's senior students who travelled to Egypt to teach:

Uthman b. al-Hakam al-Judhami (d.163 AH) and Abdur Rahman b. Khalid al-Jumahi (d. 163 AH) were the first to introduce the opinions of Imam Malik to Egypt.

Tayyib b. Kamil al-Lakhmi (d. 173 AH), Sa'eed b. Abd Allah al-Ma'afiri (d. 173 AH) and others came after the previous scholars mentioned.

From the above scholars came their students who were the main pillars and true founders of the school, such as Ibn al-Qasim (d. 191 AH), Ashhab b. Abdul Aziz al-Qaysi (d. 201 AH) and Abd Allah b.

Abdul Hakam (d. 214 AH). They travelled to learn directly from Imam Malik and then returned to Egypt with knowledge of the principles and substantive laws of the school, which they spread through their teaching and writings.

After their passing, the banner of the school was held by Asbagh b. Faraj (d. 225 AH), al-Harith b. Miskeen (d. 250 AH) and others. It then fell into the hands of Mohammed b. Abd Allah b. Abdul Hakam (d. 268 AH), Mohammed b. al-Mawwaz (d. 269 AH) and others.

Despite the fierce upheaval that the students of this school suffered, particularly from the inquisition regarding the 'createdness of the Qur'an', the school continued to remain active and academically productive until the bane of the Ubaydi dynasty afflicted them towards the end of the sixth century Hijrah. This dimmed the light of the school for two centuries, until it was rekindled and returned to its former glory, which it continues to enjoy up to the present day.

This sub-school distinguished itself through its dependence upon the authentic traditions of the companion in addition to the prophetic *Hadith*, taking the narrations that reinforce the practice of the Madinite community, which is the prevailing methodology of the Maliki School, and adopted by the majority of the sub-schools.

The Egyptian sub-school, headed by Ibn al-Qasim occupied the leading position among all Maliki sub-schools, as the auditions of Ibn al-Qasim and his contribution of opinions in the *Mudawwanah* besides the positions of Imam Malik, became the relied-upon reference by all sub-schools in general, and particularly the African and Andalusian schools. However, the auditions of Ibn al-Hakam and his narrations from Imam Malik, Ashhab and Ibn al-Qasim were preferred in the Iraqi sub-school alongside the *Mudawwanah* of Ibn al-Qasim.

Third: The Iraqi Sub-school

The Iraqi Sub-school first appeared in Basrah at the hands of Imam Malik's students Abdur Rahman b. Mahdi (d. 198 AH) and Abd Allah

b. Maslamah al-Qaynabi (d. 220 AH) as well as some scholars who had studied with some of the senior students of Imam Malik such as Yaqub b. Abi Shaybah (d. 320 AH) and Ahmed b. Mu'adhal al-Rahib, who lifted the banner of the school in Iraq. However, the strength of the school did not appear until the following generation during the period that Aal Hamad b. Zayd presided as chief justice. Those that became distinguished in this period were: Isma'il b. Ishaq al-Qadhi (d. 282 AH) who was recognised as one of the great mujtahids after Imam Malik. Others included: al-Qadhi Abu Faraj Amr b. Amr (d. 330 AH) then Shaykh Abu Bakr al-Abhari (d. 375 AH) and his followers such as Abu l-Qasim b. Jallab (d. 378 AH), Abu l-Hasan b. Qassar (d. 398 AH), Abu Bakr Baqilani (d. 403 AH), Qadhi Abdul Wahab (d. 422 AH), and their contemporaries from the erudite Maliki scholars of Iraq.

The Iraqi sub-school became extinct in Baghdad and the rest of Iraq with the passing of Abu l-Fadl Ibn Umroos (d. 452 AH)

This sub-school was influenced by the Iraqi juristic environment where the methodology of the Rationalist School prevailed, and this resulted in the school becoming distinguished from other sub-schools due to its slant towards logical reasoning and other methods which were not in line with the principles of the main Maliki school.

Fourth: The Maghrebi Sub-school

The prevalent school of thought in African countries, the Kairouan, Tunisia, and other countries of the Maghreb was that of the Kufan School until it was overtaken by the Maliki School through the students of Imam Malik that travelled to these lands, the number of which exceeded thirty.

From the most distinguished of these students and the first to enter these lands was Ali b. Ziyad (d. 183 AH) - the founder of the school in Africa - and Abdur Raheem b. Ashras, Bahloul b. Rashid (d. 183 AH), and Abd Allah b. Ghanim (d. 190 AH), all of whom were regarded as

the founding fathers for the establishment of the Maliki School in the Maghreb.

Thereafter, Ibn Ziyad's renowned student, Asad b. Furat (d. 213 AH) had the greatest impact in the compilation of the juristic rulings of this sub-school through his work *al-Asadiyyah* and *Suhnoon* (d. 240 AH). He became the authority of the school during his lifetime after its cooperation with the Egyptian sub-school produced the sterling juristic work, *al-Mudawwanah*. It was dictated by Ibn al-Qasim with the partnership of Asad b. Furat, and the verification and redaction of *Suhnoon*. The Tunisian-Kairouani school guaranteed its continuity by spreading and teaching widely.

After this generation of scholars passed on, a new batch of renowned scholars arrived, and from the most distinguished of them were: Abu Bakr al-Labbad (d. 333 AH), one of the renowned memorisers of the school, and Ibn Abi Zayd al-Qayrawani (d. 386 AH) who collected and compiled the various narrations and opinions of the scholars within the Maliki School in his large work *Al-Nawadir wa l-Ziyadaat*.

The Tunisian School also brought about the existence of another Maliki sub-school, the School of Fez and the Northern region of the Maghreb. In reality, it was an extension of the Tunisian school, and relied upon the methodological approach and juristic positions that it held. It was founded by Darras b. Isma'il (d. 357 AH), the first person who brought the *Mudawwanah* of *Suhnoon* into Fez and filled the Kairoun Mosque with his juristic knowledge in the same way Ali b. Ziyad had done so previously at al-Zaitouna.

This school, despite its late appearance in comparison to other sub-schools, grew to be the flag-bearer for the Maliki School in the Maghreb, and subsequently in Andalus. Meanwhile, its sister branch the Tunisian School remained steadfast in the face of repeated political turmoil, particularly the despotic oppression of the Ubaydi dynasty and their coercion. This continued until the weakening of the dynasty, which resulted in the return of the school's strength,

supported by its scholars who continued their efforts in spreading the school and authoring glorious works; the reputation of which spread far and wide.

This sub-school distinguished itself through the effort it placed on authenticating the numerous reports and discussing the various feasible positions of the school; this was supported by its recourse to the *aathar* (traditional reports) and the organisation of the modality of reports that Imam Malik narrated based upon the underlying proofs for Islamic law. They also paid due consideration to the redaction of all transmissions based upon the very letters in which they came down originally. All of this was done because this school was regarded as the end-product of all previous schools, and for this reason it strived to gather the qualities of all previous schools.

Fifth: The Andalusian Sub-school

From the time that Andalus was liberated, its people were following the school of Imam al-Awza'i (d. 157 AH). Thereafter, Ziyad b. Abdur Rahman also known as Shabtoon (d. 193), the founder of the Maliki School in these lands, arrived in Andalus and was the first person to introduce them to the *Muwatta* of Imam Malik, after having studied and heard it with the Imam directly. However, Ziyad's student; Yahya b. Yahya is credited for cementing the place of the Maliki School in this land, owing to his position as consultant to the Umayyad Caliph Abdur Rahman b. al-Hakam. During his time, the Caliph would not appoint a judge or conclude any contract without first consulting him, which meant that he was able to support his own school of thought and its scholars.

After this period, the reigns of the school were taken by one of Ziyad's student's, al-'Utbi (d. 254 AH) who had also studied with Suhnoon and penned his famous work that compiled the opinions of Imam Malik and his direct students. This work was very well received by the people of Andalus who approved and depended upon it leaving aside all other works. Thereafter the reigns of the school passed on to

his student Ibn Lubaba (d. 314 AH) and it continued to go from strength to strength spreading throughout Andalus until the people of Cordoba were tested by Allah through the tribulation of the Berber tribes at the beginning of fifth century Hijrah. Many scholars were killed, and others fled to Fez and surrounding areas, which resulted in the weakening of the school in Andalus. The school deteriorated further due to the lack of consideration the scholars gave to the rational sciences and logical reasoning, with their complete focus being the study of rulings and wrangling about issues within the secondary laws. This went on to the point that true fiqh was about to die out, and had it not been with Allah's blessings, came Imam al-Baji (d. 474 AH), who had travelled to the East and studied with some of its greatest scholars including Abd Allah b. Ahmed al-Harawi al-Maliki (d. 435 AH) before returning to Andalus with immense knowledge. He then dedicated himself to teaching and authoring works combining the far-sightedness of the Baghdadi scholars, and proficiency of the Kairouani scholars, and his approach was widely accepted by the senior scholars of Andalus, such as his student Abu Bakr al-Turtushi (d. 520 AH), Ibn Rushd (Averroes) (d. 520 AH) and Qadhi Iyadh (d. 544 AH) as well as others.

This school continued to prosper until the fall of Andalus in (897 AH) when its scholars migrated to North Africa, particularly to Fez of Morocco and Kairouan of Tunisia. Although the school may have departed the land in which it originated from, however its academic contribution remains alive after its fusion with the Moroccan sub-school.

In the juristic positions that it holds, this school is regarded as an extension of the Tunisian School, particularly owing to the strong connection between the two schools and their united academic contributions. It is for this reason that the later-day scholars when referring to the Maghrebi scholars include scholars from both the Andalusian and Maghrebi schools including the likes of: Ibn Abi Zayd (d. 386 AH), Ibn al-Qabisi (d. 403 AH), Abu Bakr al-Labbad (d. 333 AH), al-Baji (d. 474 AH), Lakhmi (d. 478 AH), Ibn Mihraz (d. 450

AH), Ibn Abdul Barr (d. 463 AH), Ibn al-Arabi (d. 543 AH), and their contemporaries.

Before ending this chapter, we would like to bring your attention to the order of preference regarding the sub-schools according to the Maliki school. In the eventuality of differences occurring, irrespective of whether it is with regards to the transmission from Imam Malik, or with regards to the designation of the well-known positions of the school, preference is given to the Egyptian School, then the Maghrebi School, then the Madinite School, then the Iraqi School. The reason the Egyptian School acquired this position owes itself to the preference it shows to the transmission of Ibn al-Qasim, as his transmission and designation of the well-known positions is given preference to the transmission and designation of all other scholars, and Allah knows best.



Chapter Five

The Most Notable Works of the School

Knowledge of the most notable works in the school is closely connected to the phases that the school went through; and it is for this reason that we have presented the most notable works under the headings used in the chapter dedicated to discussing these phases. We will therefore mention each phase and present the approved works of the corresponding period, discuss the features of the books, and mention whether they exist in manuscript or published forms.

First: Works Authored During the Founding and Construction of the School

Most of the works authored in this phase, excluding the Muwatta, were focused on compiling the juristic opinions of Imam Malik through the aural transmissions and narrations from a variety of his students. In addition to this, we find works dedicated to the personal opinions, preferred positions and deductions that the students of Imam Malik reached in relation to general and contemporary matters. These works represent the founding stones of the Maliki School, the canonical and most recognised of all works.

The most essential and approved works are:

1) Al-Muwatta: of the school's founder, Imam Malik b. Anas (d. 179 AH) and the first book written within the Maliki School. In this work, the Imam combines *Fiqh* and *Hadith* and presents the principal proofs for use in secondary rulings.

2) Al-Mudawwanah: of Suhnoon b. Sa'eed al-Tanukhi (d. 240 AH), regarded as the primary source of rulings in the school. It is the most noble of the canonical works and is given preference over all works, excluding the Muwatta.

3) Al-Wadiha fi Sunan wa l-Fiqh: of Abdul Malik b. Habeeb al-Sulomee (d. 237 AH). It ranks as the second of the canonical works and is a compilation of narrations from Ibn al-Qasim and his students. It became widespread and renowned in Andalus and Ibn Rushd wrote a commentary of it.

4) al-Mustakhraja min al-Asme'a (al-'Utbiyyah) of Mohammed b. Ahmed al-'Utbi (d. 255 AH). It ranks as the third of the canonical works and is based on the aural transmission of Imam Malik which was compiled and added many juristic rulings to. It was approved by the scholars to the extent that they left al-Wadiha and relied upon it alone.

5) al-Mawwaziyyah: of Mohammed b. Ibrahim also known as Ibn al-Mawwaz (d. 269 AH). It is ranked as the fourth of the canonical works and from the most honoured Maliki works, to the extent that al-Qabisi preferred it over all canonical works. The aural transmission of Ibn al-Mawwaz and his opinions are regarded as the most preferred in the Egyptian sub-school during this phase.

6) al-Majmoa: of Mohammed b. Ibrahim b. Abdoos (d. 260 AH). It is ranked as the fifth of the canonical works as it is a work that presents the knowledge of Imam Malik in its true form.

7) al-Mabsoor fi l-Fiqh: of Abu Ishaq Isma'il b. Ishaq al-Qadhi (282 AH). It is ranked as the sixth of the canonical works and from it, one is able to perceive the methodology of the scholars in Baghdad in *Fiqh* and the authoring of works.

8) Mukhtasarat Abd Allah b. Abdul Hakam (d. 214 AH): It is a large mukhtasar work in which he summarised the aural transmission he received from Ashhab as well as the Mukhtasar al-Awsat, Mukhtasar al-Sagheer and the transmission from Ibn Abdil al-Hakam. After the Muwatta, his narrations are the most relied upon within the Iraqi sub-school.

Second: Works Authored During the Development of the School

The works authored in this phase are divided into two categories. The works focusing on theoretical *Fiqh* and those focusing on applied *Fiqh*.

The works focusing on theoretical *Fiqh*

These are the works that focus on the general aspects of *Fiqh* whether they discuss issues within the school or in comparison to other schools of thought.

They include:

1) Kutub Abi Bakr al-Abhari (d. 375 AH): The most notable of his works is the commentary of Mukhtasar Ibn Abdil Hakam al-Kabeer and the commentary of Mukhtasar ibn Abdil Hakam al-Sagheer. Both of these works are approved by, and serve a pivotal role in the ijtihad, of the Iraqi sub-school.

2) al-Tafree': of Ibn Jallab (d. 378 AH) and regarded as one of the most highly regarded works in the school owing to its detailed research and discussion. It is rare to find a Maliki work that did not approve of this work.

3) Kutub Ibn Abi Zayd al-Qayrawani (d. 386 AH). One of the scholars about whom it was said: "*If it were not for him, the school would have perished*". His book and *Fatawa* have been held in high esteem and acclaimed by the Maliki scholars of past and present. Three of his works are relied upon by the jurists within the school: *al-Risala*; *al-Nawadir wa l-ziyadaat*; and *Mukhtasar al-Mudawwanah*. The last two works were relied upon by the Maliki scholars in his lifetime and after his passing.

4) 'Ayoun al-Adillah: of Abu l-Hasan b. Qassar (d. 398 AH) one of the judges about whom it was said: "*If it were not for him, the school would have perished*". This work was referred to for rulings by al-Baji and the people of the Levant which shows that it met with their approval.

5) Kutub al-Qadhi Abdul Wahab b. Nasr (d. 422 AH). His books represent the summary of development of opinions held by Maliki scholars in the Iraqi sub-school as well as the unification of opinion between the Iraqi and Maghrebi sub-schools. His book *al-Talqeen* is his most notable work, relied upon by Maliki scholars east and west.

6) Tahdheeb al-Mudawwanah: of al-Khalaf b. Sa'eed al-Baraza'e (d. 438 AH) which was relied upon by most of the scholars in the Maghreb and Andalus, and approved by most of the scholars in Africa who left aside other works in favour of it.

7) al-Jami al-Masa'il al-Mudawwanah wa l-Ummahaat of Abu Bakr b. Yunus al-Siqilli (d. 451 AH) and it was also known as *Mushaf al-Madhab* because of the accuracy of its rulings. It was depended upon by al-Khaleel in his *Mukhtasar*.

8) al-Muntaqa Sharh al-Muwatta of Abu al-Waleed al-Baji (d. 474 AH) is one of the best works authored in the school, but in reality it is an encyclopedia of comparative *Fiqh*.

9) al-Tabsirah of Abu l-Hasan Ali b. Mohammed al-Lakhmi (d. 478 AH) who is one of the four imams whose preferred opinions are approved in the *Mukhtasar of Khaleel*.

10) Kutub ibn Rushd al-Jadd: Abu l-Waleed Mohammed b. Ahmed (d. 520 AH) also one of the four imams whose preferred opinions are approved in the *Mukhtasar of Khaleel*. His most notable and widespread works among the scholars are *al-Bayan wa l-Tahseel*; *al-Muqadimaat al-Mummahidaat* and *Fatawa ibn Rushd*.

11) Kutub al-Maziri: Abu Abd Allah Mohammed b. Ali (d. 526 AH) was one of the four scholars who were relied upon by Khaleel in his *Mukhtasar* and his works are: *al-Ta'leeqa ala l-Mudawwanah*, *Sharh al-Talqeen* and *al-Fatawa*.

12) Kitab al-Tanbihaat: of Qadhi Iyadh b. Musa al-Yahsubi (d. 544 AH) which is relied upon for the explanation of difficult words in the *Mudawwanah* as well as explaining the narrations and identifying

the narrators.

13) 'Iqd al-Jawahir al-Thameena: of Abu Mohammed Abd Allah b. Najm b. Shaas (d. 610 or 616 AH) is one of the works relied upon by the Maliki scholars east and west.

14) al-Dhakheera: of Abu l-Abbas Ahmed b. Idrees al-Qarafi (d. 684 AH) is one of the most highly regarded works in the Maliki school in which he combined five books: *al-Mudawwanah*, '*Iqd al-Jawahir al-Thameena*, *al-Talqeen*, *al-Tafree*' and *al-Risalah*. It is distinguished for explaining the weaknesses in rulings, extracting secondary laws based on the principal laws, and exhaustive discussion on conflicting opinions.

The works focusing on applied *Fiqh*:

These are the works that focus on *Fatawa* and unprecedented occurrences as well as on judgments and contracts. They include:

1) Watha'iq Ibn Attar: of Mohammed b. Ahmed (d. 399 AH)

2) Kitab al-Watha'iq wa l-Shuroot Ibn al-Hindi: of Ahmed b. Sa'eed al-Hamdani (d. 399 AH)

3) Al-Muqni fi Usool al-Ahkaam: of Sulaiman b. Mohammed Batalyuwsi (d. 402 AH)

4) Al-Nihayah wa l-Tamaam fi Ma'rifat al-Watha'iq wa l-Ahkaam (al-Mutitiyyah) of Abu l-Hasan Ali al-Mutiti (d. 570 AH)

Third: Works Authored During the Stability of The School

The works authored in this period are also divided into the same two categories. The works focusing on theoretical *Fiqh* and those focusing on applied *Fiqh*.

The works focusing on theoretical *Fiqh*:

1) Al-Jami Bayn al-Ummahaat: (Mukhtasar Ibn al-Hajib) of Uthman b. Umar b. Abi Bakr (d. 646 AH) became the approved work

towards the end of the seventh century Hijrah and throughout the eighth century. Al-Khaleel wrote a commentary on it entitled *al-Tawdeeh* and from it he extracted his renowned work the *Mukhtasar*.

2) Kutub Ibn Buzayzah: Abd Allah b. Ibrahim al-Tunisi (d. 673 AH). His notable works include *Rawdhat al-Mustabeen fi Sharh al-Talqeen* and *al-'Is'aad fi Sharh al-Irshaad* which was depended upon by Khaleel when selecting the *mashoor* positions.

3) Commentaries dedicated to the Risalah of Ibn Abi Zayd al-Qayrawani

The most notable of those written are:

- a) Sharh Abu l-Hasan al-Sagheer** of Ali b. Mohammed al-Zarwili (d. 719 AH)
- b) Sharh Ibn Naji** of Qasim b. Ei'sa (d. 838 AH)
- c) Tahreer al-Maqala** of Abu l-Abbas Ahmed b. Mohammed al-Qalshani (d. 863 AH)
- d) Sharh Zarrouq** of Ahmed b. Ahmed b. Mohammed (d. 899 AH)
- e) Kifayat al-Talib al-Rabbani ala Risala Ibn Abi Zayd al-Qayrawani** of Ali b. Mohammed al-Manuwfi (d. 939 AH)
- f) Al-Fawakih al-Dawani Sharh Risala Ibn Abi Zayd al-Qayrawani** of Ahmed b. Ghunaym al-Nafrawi (d. 1125 AH)
- g) Sharh Jassous** of Abu Abd Allah Mohammed b. Qasim (d. 1182 AH)
- h) Al-Thamr al-Dani fi Taqrib al-Ma'ani** of Salih Abdus Samee' al-Aabi (d. 1285 AH)

4) Commentaries dedicated to the Jami bayn al-Ummahaat of Ibn al-Hajib

The most notable of those written are:

- a) **Al-Shihab al-Thaqib fi Sharh Mukhtasar Ibn Hajib** of Mohammed b. Rashid al-Qafsi (d. 736 AH)
- b) **Tanbih al-Talib li Fahm Kalam Ibn Hajib** of Mohammed b. Abdus Salam al-Hawwari (d. 749 AH)
- c) **Al-Tawdeeh** of Khaleel b. Ishaq al-Jundi (d. 776 AH)

5) Mukhtasar al-Shaykh Khaleel b. Ishaq (d. 776 AH)

It represents the last steps taken by the Maliki scholars in discussing the positions of the school, as everyone that succeeded it concurred with its contents and it became the relied-upon work in the school after the eight century Hijrah.

6) Mukhtasar al-Fiqhi li Ibn 'Arafah of Mohammed b. Mohammed al-Warghami (d. 802 AH)

It is distinguished for the nomenclature and definitions used by the author while mentioning the relied-upon positions, and it also has the discussions of Ibn al-Hajib.

7) Commentaries dedicated to the Mukhtasar of al-Khaleel

From the most notable of these are:

- a) **Sharh Bahram b. Abd Allah al-Dumayri** (d. 803 AH)
- b) **Al-Manza' al-Nabeel fi Sharh Mukhtasar al-Khaleel** of Mohammed b. Marzouq al-Hafeed (d. 842 AH)
- c) **Sharh Mohammed b. Mohammed b. Siraj al-Gharnati** (d. 848 AH) which was relied upon by al-Mawwaq who narrated much from him.
- d) **Sharh Mohammed b. Yusuf al-Abdari**, also known as Ibn al-Mawwaq (d. 897 AH)
- e) **Sharh of Hululu al-Kabeer wal-Sagheer** (two commentaries) of Ahmed b. Abdur Rahman (d. 897 AH)

- f) Shifa al-Ghaleel fi Hal Muqfal al-Khaleel** (Hashiyat Ibn Ghazi) of Mohammed b. Ahmed al-Uthmani (d. 919 AH)
 - g) Mawahib al-Jaleel fi Sharh Mukhtasar al-Khaleel** of Mohammed b. Abdur Rahman also known as al-Hattab (d. 953 or 954 AH) which is regarded as the strongest commentary on the *Mukhtasar* and it became the reference for future commentaries on the *Mukhtasar*.
 - h) Hashiyat Mohammed Mustafa al-Rammasi** (d. 1136 AH). This is a marginal gloss on *Fath al-Jaleel Sharh Mukhtasar al-Khaleel* of al-Tatai' (d. 942 AH) which was filled with many errors in the transmission of reports and areas of research, so al-Rammasi clarified these in his work.
 - i) Sharh Dardeer** of Ahmed b. Mohammed al-Adawi (d. 1201 AH) one of the approved books of *fatawa* in the Maghreb.
 - j) Hashiyat al-Dasuqi ala Sharh al-Kabeer li l-Dardeer** of Mohammed b. Arafah (d. 1230 AH) which was relied-upon for teaching, rulings and *fatawa* at al-Zaitouna.
- 8) al-Murshid al-Mu'een ala al-Daruree min 'Uloom al-Deen** of Abdul Wahid b. Ahmed Ibn A'shir (d. 1040 AH) which is a short didactic poem that is rich in benefits and agreement to the *mashoor* positions in the school.
- 9) al-Dur al-Thameen wa l-Mawrid al-Mu'een Sharh al-Murshid al-Mu'een** of Mohammed b. Ahmed al-Mayyara (d. 1072 AH)
- 10) Al-Majmu and its commentary and marginal gloss (Duwa al-Shumu ala Sharh al-Majmu)** of Mohammed b. Mohammed al-Ameer al-Kabeer (d. 1232 AH) and *al-Majmu* which resembles a commentary on the *Mukhtasar* of al-Khaleel in its arrangement, discussing of proofs, and comprehensiveness, often adding discussion on rulings not covered in the *Mukhtasar* and sometimes critiquing the rulings of al-Khaleel.

The works focusing on applied *Fiqh*:

These are the works that focus on *fatawa* and unprecedented occurrences as well as judgments, contracts and the accepted applied rulings in the school.

They include:

1) Tabsirat al-Hukaam fi Usool al-Aqdiyyah wa Manahij al-Ahkaam of Ibrahim b. Farhoun (d. 799 AH)

2) Tuhfat al-Hukaam fi Nukat al-Uqood wa l-Ahkaa of Mohammed b Mohammed b. A'sim (d. 829 AH)

3) Jami Masa'il al-Ahkaam mima Nazal min al-Qadaya bi l-Mufteen wa l-Hukaam (Nawazil al-Burzuli fi Fiqh wa l-Fatawa) of Ahmed b. Mohammed al-Burzuli (d. 841 or 844 AH)

4) Al-Durar al-Maknoona fi Nawazil Mazuna (al-Mazuniyyah) of Abu Zakariyyah b. Musa al-Mazuni (d. 883 AH)

5) Al-Dur al-Natheer ala Ajwiba Abi l-Hasan al-Sagheer of Ibrahim b. Hilal al-Sanhaji (d. 903 AH)

6) Al-Mi'yar al-Mu'rib wa l-Jami al-Mughrib un Fatawa Ulama Ifriqqiya wa l-Andalus wa l-Maghrib of Ahmed b. Yahya al-Wansharisee (d. 914 AH) which represents the most detailed work on the subject of nawazil.

7) Itqaan wa l-Ihkaam Sharh Tuhfa l-Hukaam of Mohammed b. Ahmed Mayyara (d. 1072 AH)

8) Nadhm al-'Amal al-Fasi and its commentary of Abdur Rahman al-Fasi (d. 1096 AH)

9) Ghayat al-Ihkaam fi Sharh Tuhfat al-Hukaam of Umar b. Abd Allah al-Fasi (d. 1096 AH)

10) Sharh al-Tuhfah of Mohammed Tawdee b. Suwda al-Murri'
(d. 1209 AH)

11) The works of Mohammed b. Abi l-Qasim al-Sijilmasi (d. 1214 AH) including a commentary of al-Amal al-Fasi and another entitled Fath al-Jaleel al-Samad fi Sharh al-Takmeel wa l-Mu'tamad. He also wrote a didactic poem on al-Amal al-Mutlaq, and then a commentary.

12) al-Bahjah fi Sharh al-Tuhfah of Ali b. Abdus Salam al-Tasuqli (d. 1258 AH)

13) The works of al-Mahdi al-Wazzani (d. 1342 AH) which include al-Mi'yaar al-Kabeer (al-Mi'yaar al-Jadeed) and al-Minah al-Samiyah fi Nawazil al-Fiqhiyyah (Nawazil al-Wazzani), Tuhfah al-Hudhaq bi Nashr ma Tadamanathu Lamiyat al-Zaqaq (Hashiya al-Wazzani ala Sharh Lamiyat al-Zaqaq).



Chapter Six

The Most Frequently Referenced Nomenclature of the School

Each of the four schools possesses nomenclature that is specific to its school and generic with that used by other schools. In this chapter, we will discuss the most notable nomenclature used within the Maliki School, focusing on the most important of these for the purposes of brevity.

The terminology in the school can be divided into four categories namely: Nomenclature specific to identifying the scholars; nomenclature specific to identifying works within the school; nomenclature specific to identifying the various schools and positions held; and nomenclature specific to identifying the preferred and well-known positions in the school.

Firstly: The Nomenclature used in relation to scholars

These are divided into two categories:

- i) words used to identify the scholars
- ii) letters used to identify them

Words used to identify the scholars:

1) al-Akhawaan: Mutarrif b. Abd Allah and Ibn Majashoon

2) al-Ustadh: Abu Bakr al-Turtushi

3) al-Imam: Abu Abd Allah al-Maziri

4) al-Jamhoor: This refers to the four founders of the juristic schools if found in the early books of the school. If found in later works discussing differences of opinion, it refers to the narrators from Imam Malik or the majority of the Maliki scholars

5) al-Saba': It refers to the seven famous jurists of al-Madinah in the era of the tabi'een who were mentioned in the famous lines of poetry:

*"Say: They are Ubayd Allah, Urwah and Qasim,
Sa'eed, Abu Bakr, Sulaiman and Kharijah."*

6) al-Shaykh: It refers to Ibn Abi Zayd al-Qayrawani if used by Ibn Arafah and others. If used by Bahram it refers to Khaleel and if used by Khaleel in Tawdeeh it refers to Ibn Abdus Salam.

7) al-Shaykhan: It refers to Ibn Abi Zayd al-Qayrawni and Ibn al-Qabisi or sometimes to Abu Bakr al-Abhari.

8) Shaykhuna: It refers to al-Adawi when used by some Maliki scholars such as al-Ameer al-Kabeer.

9) Shaykhuna ق: It refers to Ibrahim al-Laqqani when used by al-Zarqani in his commentary.

10) al-Siqiliyaan: It refers to Ibn Yunus and Abdul Haq al-Siqili

11) al-Iraqiyoona: It refers to the Hanafi School if used opposite to al-Madaniyeen (Madinite) or the Maliki School in general. If used to discuss inter-school issues comparing between the Maghreb sub-school and similar, it refers to Qadhi Isma'il, Ibn Jallab and their colleagues.

12) al-Qadhi: Abdul Wahab

13) al-Qadhiyaan: Ibn Qassar and Abdul Wahab

14) al-Qudhat al-Thalatha: Ibn Qassar, Abdul Wahab and Abu Waleed al-Baji

15) Al-Qareenaan: al-Ashhab and Ibn Nafi'

16) al-Muta'akhiroona: Ibn Abi Zayd and the Maliki scholars who came after his era.

17) al-Mutaqadimoona: The students of Imam Malik and their followers before Ibn Abi Zayd.

18) Mohammed: If it is used alone it refers to al-Mawwaz.

19) al-Mohamadaan: Ibn al-Mawwaz and Ibn Suhnoon

20) al-Mohamadoon: Ibn al-Mawwaz, Ibn Suhnoon, Ibn Abdoos and Ibn Abdil-Hakam

21) al-Madaniyoon: It refers to the Maliki school if used opposite to al- al-Iraqiyyoon or the Hanafi School. If used by itself it refers to the students of Imam Malik from al-Madinah such as: Ibn Kinana, Ibn Majashoon, Mutarrif and their colleagues.

22) al-Misriyoon: It refers to Ibn al-Qasim, Ashhab, Asbagh and their colleagues.

23) al-Maghariba: It refers to Ibn Abi Zayd, Ibn al-Qabisi, Ibn Labbad, al-Lakhmi, al-Baji, Ibn al-Arabi, Ibn Abdil Barr, Ibn Rushd, Qadhi Iyadh and the like.

Letters used to identify the scholars through the use of one or two letters:

(بب): Ahmed Baba b, Ahmed Tanbakti (d. 1023 AH) author of Nayl al-Ibtihaj a work on biographical accounts.

(بن): Mohammed b. al-Hasan al-Bannani (d. 1194 AH) and sometimes the letters م ب are used for him.

(تو) أو (ت): al-Tawdee

(تت): Mohammed b. Ibrahim al-Tatai' (d. 847 AH)

(ج): Mohammed b. al-Hasan al-Jinawi (d. 1220 AH)

(جس): Mohammed b. al-Tayyib Jassous (d. 1273 AH)

(ح): al-Hattab

(خ): Khaleel

(خش): al-Khirshi

(د) : Ahmed Zarrouq

(ره): al-Ruhuwni

(ز) or (عب) or (عبق): Abdul Baqi al-Zarqani

(س): Mohammed b. Abdus Salam al-Hawwari (d. 746 AH)

(شب): al-Shabrakhitee

(ع): Ibn Arafah

(صر): Nasir al-Deen al-Laqqani

(طخ): al-Tukhaykhi

(عج): Ali al-Ajhowri

(غ): Ghazi

(ق): al-Mawwaq

(مس): al-Masnawi (d. 1136 AH)

(مق): Ibn Marzouq

(ر) or (طفى) or (صفى) or (محشي تت): Mustafa al-Rammasi

(م): Mayyara if mentioned in al-Bahja or Bahram as found in the commentary of Zarrouq upon the Risala.

Second: The Nomenclature used in relation to books

These are divided into two categories:

i) words used to identify the books

ii) letters used to identify them

The first category: Notable words used for books:

(الأم): al-Mudawwanah

(الأمهات): Al-Mudawwanah, al-Wadiha, al-'Utbiyyah, and al-Maww-
aziyah

(الدواوين): The four previous works and al-Mabsoot of Qadhi Isma'il
al-Majmoa of Ibn Abdoos, and some scholars add
al-Mukhtalata of Ibn al-Qasim, however this is questionable
because al-Mukhtalata is the Mudawwanah before it was
organised by Suhnoon.

(الكتاب): al-Mudawannah

(المص) or (الأصل): Mukhtasar Khaleel

The second category: Notable letters used for books:

(حش): Hashiya al-Adawi ala Sharh al-Kharshi li Mukhtasar Khaleel

(ضیح): al-Tawdeeh

(فيها): Al-Mudawwanah and for some scholars it refers to Tahdheeb
al-Mudawwanah

(منها): al-Mudawwanah

(ك): Sharh al-Kharshi al-Kabeer

(مع): Majmoo al-Ameer

**Third: The Nomenclature used to describe the juristic positions
in the school.**

The following are used:

1) al-Istiqraa: It refers to the inductive reading of texts.

2) al-Ijraa: Giving a ruling on an unprecedented occurrence that

has not been addressed before in accordance to the rules and principles of the school from a matter that has been previously been dealt with and recorded.

3) al-Aqwaal: Qawlaan: It refers to the statements of Imam Malik's direct students and those after them from the *muta'akhireen* scholars such as Ibn Rushd. It is occasionally used to refer to the statement of Imam Malik.

4) al-Takhreej or Qawl al-Mukharaj: It refers to a position that exists through the principles of the school, but it has not been documented, therefore causing it to be extracted from the *mashoor* and sometimes from the *shadh*.

5) al-Taradud: The indecision of *Muta'akhireen* scholars due to the lack of a text from the *Mutaqadimeen*. Or the indecision of the *Muta'akhireen* scholars and their disagreement regarding the attribution of a position to the school; this is also known as *turuq*.

6) al-Riwayaat: The statements of Malik that have been transmitted from him.

7) Sakato anho: It refers to al-Bannani and al-Ruhwni and al-Tawdee

8) al-Tareeq and al-Turuq: Differences of opinion between the *shuyoukh* regarding transmission of the position in the school. Is there one position or two positions or more than that?

9) al-Mansous: It refers to the statements of Imam Malik or his students. It is occasionally used to refer to the statements of the *Muta'akhireen* scholars

Fourth: The Nomenclature used to describe the preferred and well known positions in the school.

The following are used:

1) al-Itifaaq: The agreement of the approved scholars within the

school, not including scholars outside of the school.

2) al-Ijma': The agreement of all scholars in the Maliki School and other schools. Sometimes, the term *Ijma'* is used interchangeably with *Ittiffaaq* and vice versa.

3) al-Mashoor: That position which many have stated or the dominant position. It has also stated as being the position that has the strongest supporting evidence which would carry the same meaning as *al-rajih*. Others have said that it is the position of Ibn al-Qasim in al-Mudawwanah.

4) al-Ashhar: It refers to the presence of two opinions in a matter. The *marshoor* position is lesser in degree than the *ashhar*.

5) al-Rajih: It refers to the position that has the strongest supporting evidence. It has also been said it is the position which many have stated, however the first definition is more correct.

6) al-Daeef: This is the opposite of *rajih*: The position which does not have strong supporting evidence.

7) al-Sahih: This refers to the position which has strong supporting evidence.

8) al-Asahh: This refers to the stronger of two strong positions which has been given preference through one of the modes of rendering preference.

9) Fasid al-Daleel: Invalid supporting evidence.

10) al-Zahir: This refers to the position which does not come from textual proof, however it has come to be recognised through supporting evidence or as the position of the school.

11) al-Azhar: This refers to the position which has clear supporting evidence such that no doubt remains about it.

12) al-Madhhab: This refers to the position of Imam Malik and his *ijtihad* and the position of those after him. According to the muta'akhireen (Latter-Day) scholars it is the relied upon *Fatwa* within

the school.

13) al-Mu'tamad: This refers to the dominant position irrespective of whether its strength is through its being the most preferred or most well-known position.

14) al-Ma'ruf: This refers to the established position of Imam Malik or one of his direct students.

15) al-Munkar: This refers to the position which has not been authentically established as being from Imam Malik or one of his direct students

16) al-Mufta bihi or ma bihi al-fatwa: This refers to the *rajih* or *mashoor fatwa* position. No *fatwa* is given outside of this.

17) alazi jara alayhi al amal: This refers to the position that has been chosen by one of the *muta'akhireen* scholars for issuing a legal verdict that is not in agreement with the *rajih* or *mashoor* position of the school, due to scholarly consideration given to the customary practices or because its being for public interest or a blocking of detriment.

18) al-ahsan: This refers to the position which is derived through *istihsaan*. It does not mean the *ahsan* (best) position in the school.

19) al-awla: It means the same as *ahsan*.

20) al-ashbah: It refers to one position being more similar to the principles of the school than another position. It could also mean, that there are two positions that have both been arrived at by *qiyas* and the one most similar to the source of deduction is known as *al-ashbah*.

21) al-Mukhtar: This refers to the position chosen by some scholars because of its having stronger supporting evidence, irrespective of whether it is the well-known position in the school or not.

22) al-Sawaab: The opposite of incorrect and it is sometimes used to show the chosen position of a scholar from the *muta'akhireen*.

23) al-Aswab: This refers to the existence of two positions that are both *sawaab* and one of them is stronger than the other.

24) al-Haq: The outcome after verification of the chosen position in the school regarding a matter. The opposite of *al-haq* is *al-wahm*.



**Imam Mohammed b. Idris
al-Shafi'i's
School of Thought**

The Islamic Research Team of Darul Iftaa at the Kuwait Ministry of Endowments has produced a short introduction to the Shafi'i School of Thought and it has done well in presenting a clear, simple, organised and precise description of Imam al-Shafi'i, his school, its references, its scholars, their exceptional achievements, and the wealth of Islamic literature that they have left behind.

I have read the work and am pleased with its content, from the composed way it has been presented, to its meticulous organisation and substance that I found replete with beneficial points of knowledge. At this juncture, I feel obligated to express my gratitude to all those responsible for bringing this work to fruition, and pray that Allah -whose pleasure is our ultimate goal- rewards them graciously.

Shaikh Ali Khalid al-Sharbaji*

** He is a Shafi'i jurist who has authored numerous works related to the juristic school and other subjects including: A Series on the Acts of Worship in the Shafi'i School; An Introduction to Studying Islamic Jurisprudence; Tafseer al-Basha'ir and other works. In addition to this, he has also contributed to other works such as The Methodology of Fiqh and has verified Shah Waliullah's Rahmat al-Ummah fi Ikhtilaaf al-A'immah. He supervises a renowned study circle where he teaches Shafi'i fiqh to students of knowledge in Kuwait. He has previously worked as a teacher at the Islamic University of Madinah and presently serves as an academic consultant to the Supreme Council for the Planning and Implementation of Shari'ah in the State of Kuwait.*

Imam Mohammed b. Idris al-Shafi'i's School of Thought

Indeed the student who seeks to become familiar with a juristic school; to understand its rulings and branches, its pillars and principles, to study the various stages of its development throughout history along with comprehensive knowledge of its scholars and written works - the benefit in developing a firm juristic personality will be immense, thus affording him with the knowledge, jurisprudence and ability to exert himself in juristic issues.

The Shafi'i School is renowned for possessing a strong heritage of jurisprudence that is firmly established within its own foundational principles, rich with its own *mujtahid* scholars and *fuqaha*. It holds a unique position among the four schools of thought as Imam al-Shafi'i was the only founder who codified his jurisprudence and the fundamental principles of derivation. Through this, the school was blessed with having a steadfast methodology and logical progression in its juristic rulings, adapting to the changing times as its influence spread.

In addition to the above, is the status that its founder Imam Mohammed b. Idris al-Shafi'i (may Allah have mercy upon him) held among the founding scholars of the other juristic schools; recognised for his depth of understanding, brilliance, and display of intelligence in his research, debate and logical reasoning, as well his wide scope of knowledge across other sciences.

In this treatise, which serves to be an introduction to the Shafi'i School, we will study the school and become familiar with the personality of Imam al-Shafi'i, the development of his school throughout time, the most notable scholars of the school, their writings and academic contribution and what effect these had on serving the school. These different aspects will be discussed over the following chapters:

Chapter One: Biography of the Founder

Chapter Two: The Development of the School and its Historical Phases

Chapter Three: The Fundamental Principles of Derivation in the School

Chapter Four: The Most Notable Works of the School

Chapter Five: The Most Frequently Referenced Nomenclature of the School

Chapter One

Biography of the Founder

Firstly: His Name and Lineage

He is Abu Abd Allah Mohammed b. Idris. b Abbas b. Uthman b. Shafi'i b. Sa'ib b. Ubayd b. Abd Yazeed b. Hisham b. Abd Manaf al-Matlibi al-Quraishi. His lineage goes back to Abd Manaf the grandfather of the Prophet Mohammed (peace and blessings be upon him). Imam al-Shafi'i ascribed himself to Shafi'i b. Sa'ib.

Secondly: His Birth and Upbringing

Imam al-Shafi'i was born in Gaza and it has been said he was born in Asqalaan or in Yemen in the year 150 AH, the year in which Imam Abu Hanifah Nu'man b. Thabit (may Allah have mercy upon him) passed away. It was said that al-Shafi'i was born on the very day that he passed away. His father passed away soon after his birth and a short while later, his mother decided it would be best to migrate to the Holy City of Makkah and raise him among his family, the Muttalib branch of the Quraish. He was yet to reach the age of two when he arrived there. Imam al-Shafi'i grew up among the most eloquent of the Arabs and would often spend time with the Hudhayl Tribe who were masters of the language. This resulted with him being blessed with the purest and most accurate form of the language. He also committed to memory the Holy Qur'an and the *Muwatta* of Imam Malik b. Anas (may Allah have mercy upon him).

Thirdly: His Journeys for Seeking Knowledge and most Notable Teachers and Students

Imam al-Shafi'i travelled extensively throughout different stages of his life seeking knowledge, serving in public office in Yemen, and establishing his own circle of knowledge where he issued *fatawa* and

taught his juristic principles; becoming known as an independent *Mujtahid*.

Below we present these different stages for ease of understanding:

1) His frequent travelling in between Makkah and al-Madinah

Before Imam al-Shafi'i travelled to al-Madinah he lived in Makkah studying *hadith* and *fiqh* with its leading scholars such as: Sufyan b. Uyainah (d. 198 AH) who was a leading scholar of *hadith* from the senior students of the *tabi'een* (followers). In Makkah he also studied with Muslim b. Khalid al-Zanji (d. 179 AH), the leading jurist of Makkah.

Imam al-Shafi'i then travelled to al-Madinah to study with the renowned jurist and *hadith* scholar Imam Malik b. Anas. He attended his lessons and read Imam Malik's *Muwatta* to him. During this time, he penned down the *fiqh* and *fatawa* of Imam Malik as well as thirteen other jurists and *hadith* scholars that resided in al-Madinah, as mentioned by Imam Abu Bakr al-Bayhaqi.

2) His departure to Yemen

After the passing away of his main teacher Imam Malik in 179 AH, Imam al-Shafi'i returned to Makkah before setting out to Yemen where he studied with some of its scholars while serving in the local administration. Due to the jealousy of certain factions that alleged he was in collaborating with the Alawi movement against the Abbasid Caliphate, he was arrested and taken to Iraq for trial.

3) His departure from Yemen

Imam al-Shafi'i was forced to leave Yemen in 184 AH and upon arriving Iraq, he met with the Hanafi Imam Mohammed b. Hasan al-Shaybani (d. 189 AH) the direct student of Imam Abu Hanifah who interceded for him at the court of the Caliph Haroon al-Rasheed (d. 193 AH), who then recognised his status and forgave him.

4) **In Baghdad**, Imam al-Shafi'i dedicated himself to studying with Imam Mohammed b. Hasan of the Hanafi School and was greatly impressed by him, regarding him as his second teacher after Imam Malik b. Anas (may Allah have mercy upon them). In this stage of his studies, he learnt *fiqh* and took knowledge from a large number of Iraqi scholars including: Wakee b. al-Jarrah (d. 197 AH), Abdul Wahab b. Abdul Majeed al-Thaqafi (d. 194 AH), and Isma'il b. Ibrahim al-Basri, also known as Ibn Ulayyah (d. 193 AH)

5) His return to Makkah

After the passing away of his teacher Imam Mohammed b. Hasan in 189 AH, Imam al-Shafi'i departed Baghdad and headed to Makkah where he remained for a lengthy period of time. He established his own circle of knowledge where he discussed and taught the principles of his school, blending his deep understanding of the distinctiveness of both the Madinite and Iraqi juristic schools into his own independent school. Within a very short period of time, scholars began to recognise his calibre and travelled from far to study with him; the most famous of these were Imam Ahmed b. Hanbal (d. 241) and Ishaq b. Rahaway (d. 238 AH).

6) His return to Baghdad

In the year 195 AH, Imam al-Shafi'i returned to Baghdad where he conducted his juristic circles of knowledge and penned down the founding principles of his school. He began writing his book *al-Hujjah* and his treatise *al-Risala* which represented his initial methodology of deriving juristic rulings, which would later become known as *al-Madhab al-Qadeem* or the Old Juristic School. During this time, his most famous Iraqi students were: Abu Thawr al-Kalbi (d. 240 AH), Abu Ali al-Karbeesi (d. 248 AH), and al-Hasan al-Za'farani (d. 260 AH)

7) His travelling between cities

Between 197 and 199 AH Imam al-Shafi'i travelled in between

the cities of Baghdad and Makkah until he choose to migrate to Egypt after becoming despondent with the political situation and Caliph al-Mamoon's adopting of the *Mu'talizite* doctrine.

8) His residency in Egypt

After being blessed with gathering the knowledge and *fiqh* of Hejaz, Yemen and Iraq, Imam al-Shafi'i decided that it was time to expand his horizon by travelling to Egypt in the year 199 AH. He remained in Egypt for the rest of his short life, engaged in developing and refining his school, based on the combined sacred knowledge and understanding of Muslim society that he had obtained throughout his life. Despite only living a few years in Egypt, Imam al-Shafi'i produced a prodigious amount of work that would serve to establish his school.

Firstly: He conveyed and taught the founding principles of his school as well as his juristic opinions to a very large number of students, many of whom became the leading jurists of their time. His most notable students during his time in Egypt were Imam al-Buwayti (d. 231 AH), Imam al-Muzani (d. 264 AH), and al-Rabi' b. Sulaiman al-Muradi (d. 270 AH).

Secondly: He penned down the founding principles of *al-Madhab al-Jadeed* or the New Juristic School in his work *Kitab al-Umm* and *al-Risala al-Jadeeda*, as well as others.

Fourthly: His Writings

The works of Imam al-Shafi'i as noted in historical accounts, including those that are no longer in existence are many; the most notable of them are:

Al-Mabsoot, which is the same work as *Kitab al-Umm*, however it was given this name as it was reported by his student al-Hasan al-Za'farani (d. 260 AH). This is the conclusion that more than one

contemporary scholar has reached regarding these works.

Kitab al-Sunan, which was reported by Harmalah b. Yahya al-Misri (d. 243 AH). It is a work based on the *fiqh* of Imam al-Shafi'i as presented in the *Kitab al-Umm* as well as additional reports and rulings.

With regards to the works that have reached us within his magnum opus *Kitab al-Umm*, we have listed them below for ease:

1) His book *Ikhtilaaf Abi Hanifah wa Ibn Abi Layla*, which was originally written by Mohammed b. Hasan al-Shaybani and then edited by Imam al-Shafi'i presenting his rulings and juristic preferences.

2) His book *Ikhtilaaf Ali wa Abd Allah b. Mas'ood* (may Allah be pleased with them), in which Imam al-Shafi'i presents the juristic positions in which he diverges from the rulings given by the jurists of Iraq, specifically those of the Hanafi School of Thought such as Imam Abu Yusuf and Mohammed b. Hasan.

3) His book *Ikhtilaaf Malik wa Shafi'i*, which he dictated to his student Rabi'e al-Muradi.

4) His book *al-Radd ala Mohammed b. Hasan*, in which he refutes numerous positions held by his teacher Mohammed b. Hasan regarding matters of legal retribution and blood money.

5) His book *Siyar al-Awza'i*, in which he discusses the juristic rulings of Imam al-Awza'i in matters relating to Jihad.

Fifthly: The Praise of Scholars Regarding Imam al-Shafi'i

Owing to the dedication and diligence of Imam al-Shafi'i towards knowledge and its people, he earned a great reputation among them. This status was not accorded to him by his students only, but even

among his peers and teacher who came into contact with him and were touched by his superior character and knowledge.

Ishaq b. Rahaway narrates: *“Both Ahmed b. Hanbal and I were in Makkah during the time of Imam al-Shafi’i and he said to me. ‘Abu Ya’qub, sit with this man (al-Shafi’i)’. I said to him, what should I do with him when his age is similar to ours? You want me to leave Ibn Uyainah and al-Maqburi!? He said: ‘Woe to you; that can be missed, but this (the circle of al-Shafi’i) cannot be.’ Thereafter I sat down with him.”*

Ahmed b. Hanbal said: *“Our napes (of the people of Hadith) were in the hands of the students of Abu Hanifah and we could not clasp them back until we saw al-Shafi’i. He possessed the most understanding of the Qur’an and the sunnah of the Messenger (peace and blessings be upon him) and he did not suffice with a scant knowledge of hadith.”*

He also said: *“Over forty years of prayers, I have always supplicated for Mohammed b. Idris. There was no jurist who was more strict in his adherence to the hadith of the Prophet (peace and blessings be upon him).”*

Abu Ubayd Qasim b. Sallam said: *“I have never seen anyone more intelligent, more scrupulous, more eloquent, or nobler of opinion than al-Shafi’i”*

When the name of Imam al-Shafi’i would be mentioned in front of Imam Abu Bakr Abd Allah b. Zubayr al-Humaydi he would say: *“The leader of the jurists narrated to us...”*

Sixthly: His Passing away

In the last land (Egypt) that Imam al-Shafi’i visited during his illustrious life, he became unwell with piles and suffered for some time before meeting the inevitable and leaving this world on the last day of Rajab in the year 204 AH. He was only 54 years of age as his

student al-Rabi' al-Muradi stated.

May Allah have mercy upon the great Imam and provide him with a dwelling in the expansive gardens of Paradise.



Chapter Two

The Development of the School throughout History and its Phases

The first impression one may get perusing the phases of development which the school went through, is that of a flagrant difference between the general overview and the particular details of this transition. However if one takes a deeper look into the separate stages of these phases, he is sure to arrive at the reality of the issue and will observe the commonalities, becoming aware that the ostensible differences are often due to the way things are presented.

It is for this reason that we will not follow the conventional method used when writing on this topic, but we will use simple language and shorter sentences in order to show the definitive phases of this transition, and to ease understanding.

The First Phase: The Establishment and Maturity of the School between the years 195 - 204 AH.

This phase starts from the time that Imam al-Shafi'i paid his second visit to Baghdad and lasts up to his passing in Egypt, in 204 AH. This phase can be split into two distinct sub-phases which are:

The First Sub-phase: The years between 195 and 199 AH which is the duration of his residency in Iraq, in which he founded *al-Madhab al-Qadeem* (the Old Juristic School) entirely independent of the *ijtihad* that Imam Malik used in his principle and substantive laws.

His old opinions were compiled in his juristic work entitled *al-Hujjah* and *al-Iraqiyyah* (*al-Risalah al-Qadeemah*) in *usool al-fiqh*.

The Second Sub-phase: The years between 199 and 204 AH

which is the duration of his residency in Egypt, where he evaluated and verified *al-Madhab al-Qadeem*. This resulted in his revising numerous verdicts as well as refining some of his previous principles, which he then included in the works that he wrote in Egypt. This period witnessed the foundation of Imam al-Shafi'i's *al-Madhab al-Jadeed* (the New Juristic School) which was represented in his latest works *Kitab al-Umm* in Islamic Jurisprudence and *al-Risala al-Jadeeda* in the principles of derivation within the school.

The Second Phase: The Transition, Transmission and Stability of the School (204 - 505 AH)

This phase started with the passing of Imam al-Shafi'i (may Allah have mercy upon him) in 204 AH, and continued up to the passing of Imam al-Ghazali (may Allah have mercy upon him) in 505 AH.

This phase can also be split into two distinct sub-phases which are:

The First Sub-phase: The years between 204 AH and 270 AH which represents the period that the Shafi'i School went through a transition with the Egyptian students of Imam al-Shafi'i conveying *al-Madhab al-Jadeed* in their written works, thus introducing it to students of other juristic schools.

This sub-phase ended in the year 270 AH corresponding to the year that Imam al-Rabi' b. Sulaiman al-Muradi - the last student and transmitter of Imam al-Shafi'i's books - passed away.

The Second Sub-phase: The years between 270 AH and 505 AH which represented the period in which the Shafi'i School developed its stability, as its scholars and written works began to be widely appreciated and identified as an independent juristic school.

This second sub-phase ended in the year 505 AH corresponding to the year that Imam Abu Hamid al-Ghazali (may Allah have mercy upon him) passed away, as he is held in very high esteem by Shafi'i

scholars owing to his monumental works on both jurisprudence and the principles of derivation within the school.

In the fourth and fifth centuries, two distinct methodological approaches to composing Shafi'i jurisprudence arose; one was the Iraqi approach, and the other was the Khurasani approach.

Imam al-Nawawi (may Allah have mercy upon him) in discussing both of these approaches states: *"You should know that the method of transmission employed by our Iraqi colleagues to convey Shafi'i texts, the rulings of the school and the opinions of our preceding colleagues, is usually more precise and reliable than that of the Khurasanis; and that the Khurasani approach is usually better researched, broader in scope and refined."*

Among the most notable scholars who employed the Iraqi approach were:

Imam Abu Hamid al-Isfarayeeni Ahmed b. Mohammed b. Ahmed (d. 406 AH), Qadhi Abu Tayyib al-Tabari Tahir b. Abd Allah b. Tahir (d.450 AH), Imam Abu l-Hasan al-Mawardi Ali b. Mohammed b. Habib al-Basri (d. 450 AH) and others.

Among the most notable scholars who employed the Khurasani approach were:

Imam Abu Bakr al-Marwazi Abd Allah b. Ahmed b. Abd Allah (d. 416 AH) also known as al-Qaffaal al-Sagheer and Imam Abu Mohammed al-Juwayni Abd Allah b. Yusuf b. Abd Allah (d. 438 AH) the father of Imam al-Haramayn and Qadhi Husain b. Ahmed (d. 462 AH)

Thereafter, a group of jurists who merged the combined strengths of the two above approaches - reliability and organisation - appeared, and the most notable of them were:

Imam al-Ruwyani (d. 501 AH), Ibn al-Sabbagh (d. 477 AH), Imam al-Haramayn al-Juwayni (d. 478 AH), Abu Bakr al-Shashi (d. 505 AH) and Hujjat al-Islam Imam al-Ghazali (d. 505 AH)

The Third Phase: The Evaluation and Verification of the School (505 - 1004 AH)

This phase started with the passing of Imam al-Ghazali (may Allah have mercy upon him) in 505 AH and continued up to the passing of Imam Shams al-Deen al-Ramli (d. 1004 AH); and it is split into three distinct sub-phases which are:

The First Sub-phase: The years between 505 AH and 676 AH represent the start of the evaluation process within the Shafi'i School, and is referred to as the 'First Evaluation'. It incorporates the juristic exertion, evaluation and refinement of Imam al-Rafi'i (d. 623 AH) and Imam al-Nawawi (d. 676 AH)

Imam al-Rafi'i (may Allah have mercy upon him) became distinguished in this phase, owing to his evaluation of the school in his work *al-Muharrar*, which was based upon the earlier work *al-Wajeez* of Imam al-Ghazali. It quickly became the preferred point of reference in identifying the approved position of the Shafi'i school. Thereafter, he authored other works including an encyclopedic commentary on al-Ghazali's *al-Wajeez*, entitling it *al-Azeez Sharh al-Wajeez*.

After the passing of Imam al-Rafi'i (may Allah have mercy upon him) the juristic exertion of Imam al-Nawawi played a big role in serving the evaluation of the school based on the effort of his predecessor, Imam al-Rafi'i. He wrote a summary of Imam Rafi'i's *al-Azeez Sharh al-Wajeez*, entitling it *Rawdhat al-Talibeen*, as well as a summary of Imam Rafi'i's *al-Muharrar*, entitling it *Minhaaj al-Talibeen*. In both of these works, he verified and evaluated the Shafi'i School. One of his most significant efforts in the school, was his verifying and evaluating of *al-Muhadhdhab of al-Shirazi* in his commentary *al-Majmu*, however he died before completing it.

The Second Sub-phase: The years between 676 AH and 926 AH. From the passing of Imam al-Nawawi (may Allah have mercy upon him) and continuing up to the passing of Imam Zakariyyah al-Ansari

(d. 926 AH) (may Allah have mercy upon him). This period witnessed a renewed interest in evaluating the school, which came to be known as the 'Second Evaluation'.

During this period, numerous eminent Shafi'i scholars poured their intellectual capabilities into producing some of the finest commentaries and marginal glosses in the school, writing on the works of previous scholars with a particular focus on the works of the two Imams - al-Rafi'i and al-Nawawi - who had preceded them.

Among the most notable scholars of this period were:

Ibn Rif'ah (d. 710 AH) and his work *al-Matlub*, a commentary on al-Ghazali's *al-Waseet*, Imam Taqi al-Deen al-Subki (d. 756 AH) and his work *al-Ibtihaj*, a commentary on al-Nawawi's *al-Minhaaj*, as well as other scholars including Al-Zamakshari (d. 794 AH), Imam al-Bulqini (d. 805 AH), and the seal of the scholars Shaikh al-Islam Zakariyyah al-Ansari (d. 926 AH).

Among the distinguishing features of this period was the authoring of works dedicated to *usool al-fiqh* or the fundamental principles of derivation in the school that combined verification and refinement; especially the works of *takhreej* such as Imam Zanjani's (d. 656 AH) *Takhreej al-Furoo' ala al-Usool* and Isnawi's (d. 772 AH) work with the same name.

We also find works dedicated to expounding on the maxims of fiqh; a field in which the Shafi'i School were the first to author. The most famous of these works are:

- 1) *Al-Ashbah wa Naza'ir* of Ibn Wakeel al-Shafi'i (d. 716 AH)
- 2) *Al-Ashbah wa Naza'ir* of Taj al-Deen b. Subki (d. 771 AH)
- 3) *Al-Qawa'id* of Abu Bakr Hisni al-Shafi'i (d. 829 AH)
- 4) *Al-Ashbah wa Naza'ir* of Imam al-Suyuti (d. 911 AH)

The Third Sub-phase: The period between 926 AH and 1004 AH signified the conclusion of the evaluation process in the Shafi'i

School and the completion of the 'Second Evaluation'. It incorporates the contribution of Ibn Hajar al-Haytami (d. 974 AH) and Shams al-Deen al-Ramli (d. 1004 AH) based on the efforts of the 'two imams' of the 'First Evaluation'.

During this period, Imam al-Haytami and al-Ramli became distinguished for their dedication to the works of Imam al-Rafi'i and Imam al-Nawawi weighing up and selecting the preferred and relied upon position in the rulings that their predecessors differed on. In addition to this, they penned down their own positions on contemporary issues that were not dealt with by Imam al-Rafi'i and Imam al-Nawawi.

And no evidence is stronger in proving the dependency and dedication of these two imams, upon the works of Imam al-Rafi'i and Imam al-Nawawi, than the fact that most notable works of Imam al-Haytami and Imam al-Ramli are commentaries on Imam al-Nawawi's *al-Minhaaj*.

The Fourth Phase: Serving the Works of the First and Second Evaluation (1004 - 1335 AH)

This period in the history of the Shafi'i School represented a time in which scholars focused on serving the works of the great imams that preceded them, as few felt the need to reevaluate the works that had already been verified and refined. Therefore, it became common for the scholars to pen marginal glosses on the works of their predecessors.

From the most famous of these marginal glosses were:

Hashiyat al-Qalyubi (d. 1069 AH) and Umayra (d. 957 AH) on Jalal al-Mahalli's (d. 864 AH) *Kanz al-Raghibeen* which was a commentary on al-Nawawi's *al-Minhaaj*.

Hashiyat al-Shabramulissi (d. 1087 AH) on al-Ramli's *Nihayat al-Muhtaj*.

Hashiyat al-Jamal (d.1204 AH) on Zakariyyah al-Ansari's *Sharh Manhaj al-Tullab*.



Chapter Three

The Fundamental Principles of Derivation in the School

These principles are also known as: The Legal Theory of the Shafi'i School.

Imam al-Shafi'i' (may Allah have mercy upon him) is widely regarded as the first scholar to write on the subject of *usool al-fiqh*, and his treatise on the subject is the first surviving work that has reached us. Imam al-Shafi'i' (may Allah have mercy upon him) therefore occupies a unique place in this area and was the only founder from among the four schools to codify the *usool al-fiqh* of their respective school. In this way, he eliminated the need for his students to review his opinions and extract the principles of derivation as the students of the other schools had to. He provided an exposition of his methodology and juristic guidelines in his works *al-Risala* and *Kitab al-Umm*.

The researcher Ali al-Khafeef states: *“The Shafi'i' School distinguishes itself from the other schools as its founder laid down its foundations clearly, and defended them in his books al-Umm and al-Risala, which he wrote for this purpose. For this reason, his methodology is definitive, not assumed; it has been transmitted directly from him, not deduced by looking at his opinions”.*

From the statements of Imam al-Shafi'i' (may Allah have mercy upon him) discussing his legal theory, we find the following in *Kitab al-Umm*:

“Indeed the proof is to be found in the Book of Allah, or the sunnah, or the statement from a companion of the Prophet (peace and blessings be upon him), or the consensus of the Muslims, or Qiyas (analogy) based on the previous proofs.”

He also said:

“Knowledge (source of law) is of two kinds: That which is to be obeyed, and that which is derived. That which is to be obeyed is the Book of Allah; if nothing (is found), then the sunnah; and if nothing (is found), then the positions held by our predecessors who none have disagreed with; if nothing (is found) then we make qiyas (analogy) based on the Book of Allah; if nothing (is found) then then we make qiyas (analogy) based on the sunnah of the Messenger (peace and blessings be upon him); if nothing (is found) then then we make qiyas (analogy) based on then the positions held by our predecessors who none have disagreed with.”

Therefore, the five principal sources of Islamic Law in the Shafi'i School are:

The First Source: The Book of Allah

Imam al-Shafi'i' (may Allah have mercy upon him) held that the Book of Allah is the principal source of all Islamic legislation as he said:

“No calamity will ever descend upon a person from those who are upon the religion of Allah, except that in the Book of Allah is a guidance to indicate the right way.”

And in explaining, he also said:

“No one is commanded to rule by the truth, except that he has learnt the truth, and the truth is not known unless it comes from Allah, literally or implicitly as Allah has put the truth in His Book, then the sunnah of his Prophet (peace be upon him) so no calamity will ever descend upon a person except that in the Book of Allah is a guidance (addressing it) explicitly or implicitly.”

The Second Source: The Sunnah

Imam al-Shafi'i' (may Allah have mercy upon him) held that the *sunnah* was the secondary source of Islamic legislation, however he

would sometimes count it at the same provenance as the Book of Allah, as he states in *Kitab al-Umm*: “Knowledge (source of law) is of varying levels: “The first is the Book of Allah and the authentic *sunnah*...”

At other times he separates them to two levels, the first being the Book of Allah and the second being the *sunnah*.

It appears that Imam al-Shafi'i' (may Allah have mercy upon him) intended that the *sunnah* be the explanation of the Qur'an, providing us with its interpretation; and in this way, it is at the same level of the Qur'an. Another explanation is that he intended for both of them to be at the same level in obligating obedience to them, but at two different levels with respect to being sources of legislation.

Imam al-Shafi'i' (may Allah have mercy upon him) opined that the obligation of obeying the *sunnah* was established by the divine command to obey the Messenger (peace and blessing be upon him), as he states:

“And Allah in his Book obligated the obedience of the Messenger (peace and blessings be upon him) and to resort to his rulings, so he who accepts to turn to the Messenger (peace and blessings be upon him), accepts it by the obligation imposed by Allah.”

Imam al-Shafi'i' (may Allah have mercy upon him) spoke out against the three sects who attribute themselves to Islam, but are united in rejecting the *hujjiyah* (proof-value) of the *sunnah*. The first sect rejected the *hujjiyah* of the *sunnah* entirely; the second rejected that which did not occur explicitly in the Qur'an; and the third rejected the *aahad* (solitary) reports.

Imam al-Shafi'i' held that the *aahad* report was every report that did not meet the conditions of the *mutawatir*. He defined *mutawatir* as public narration coming from the public sphere. He accepted the *aahad* report even if it only came through one narrator, subject to his trustworthiness.

The question arises: What is the standard for trustworthiness in a

report and its acceptance?

Imam al-Shafi'i' (may Allah have mercy upon him) defined this clearly when he said: The proof-value of a solitary report is not established until several conditions are met: The person who narrates it is upright in his religious observation, known for trustworthiness in speech, cognizant of what he speaks, scholarly in the full language and purport of the hadith, and must render the hadith verbatim, not in an equivalent meaning. If he renders it through meaning - and he is not scholarly in language and purport - he may without realising, cause the halal to become haram; however if he renders it verbatim, then no scope is left to fear regarding the purport of the hadith.

Preservation: He must possess a retentive memory if narrating from memory, and if narrating from his written collection he must have preserved it well. Furthermore, his narrations should be in agreement with the scholars who are reliant on their memory recall for narrating.

He should also not be implicated in *tadlis*: distorting hadith by either narrating from someone he met that which he did not hear from him directly, or by attributing to the Prophet (peace and blessings be upon him) reports that contradict what the trustworthy have narrated from him (peace and blessings be upon him).

These conditions should be present in the generation above him (those who narrated to him) and so on, until the chain comes to its end, connected back to the Prophet (peace and blessings be upon him) or to whomsoever the chain ends with. This is because each person (in the chain) serves as an asserter for the person who narrated to him and for the person who narrated from him; therefore we cannot exempt any of them (narrators) from what I have described .

And Imam al-Shafi'i' (may Allah have mercy upon him) used to say: *"Whenever I come across a hadith (authentic) of the Prophet (peace and blessings be upon him) and I do not act by it, then it serves witness to you that I have lost my mind."*

The Third Source: Consensus with regards to matters that are not found in the Qur'an or Sunnah.

Imam al-Shafi'i' (may Allah have mercy upon him) held that *ijma'* (consensus) was the third source of Islamic Law, and he supported this with the Qur'anic verse:

﴿وَمَنْ يُشَاقِقِ الرَّسُولَ مِنْ بَعْدِ مَا تَبَيَّنَ لَهُ الْهُدَىٰ وَيَتَّبِعْ غَيْرَ سَبِيلِ الْمُؤْمِنِينَ نُوَلِّهِ مَا تَوَلَّىٰ
وَنُصَلِّهِ أَجْهَرًا وَسَاءَ أَتُّصَفِّرًا﴾ النساء: ١١٥

And anyone who splits off from the Messenger after the guidance has become clear to him and follows a way other than that of the believers, We shall leave him in the path he has chosen, and land him in Hell. What an evil refuge! (4:115)

And from the statements of Imam al-Shafi'i' (may Allah have mercy upon him) confirming his order of preference, we find:

“Knowledge (source of law) is of two kinds: That which is to be obeyed and that which is derived. That which is to be obeyed is the Book of Allah, if nothing (is found) then the sunnah and if nothing (is found) then the positions held by our predecessors who none have disagreed with”.

Imam al-Shafi'i' (may Allah have mercy upon him) discussed *ijma'* in some detail and said:

“Some ask, is there such a thing as ijma'? I say, yes, all praises are for Allah, there are many obligatory actions that nobody is ignorant of, and ijma' means if you were to say - the people have reached a consensus - you would not find a single person (from the laity) around say 'this is not from consensus.' This is the method to ascertain the truth of the one who claims consensus.”

And he also said: *“Neither I, nor any scholarly person would say 'this is agreed upon' unless (it were a matter that) you would never find a scholar who would inform you of it, or relate it from a predecessor; such as there are four units for the dhuhr prayer, and that wine is haram, and similar things”.*

The Fourth Source: The Statement of a Sahabi upon which there is no disagreement between them

Imam al-Shafi'i regards the statement of a *sahabi* upon which there is no disagreement between them, as a source of Islamic Law, if the matter cannot be found in the Book of Allah, the *sunnah* or *ijma'* as previously mentioned.

Imam al-Shafi'i states in *Kitab al-Umm*:

"As long as the Book of Allah and the sunnah are present, there is no excuse for the one who hears them to not obey them. However if that is not present, we resort to the statements of the sahabah or one of them; we start with the statements of the leaders - Abu Bakr, Umar or Uthman, if we are required to follow - as this is preferred to us if we do not find proof from the Book of Allah or sunnah; we choose to follow the statement of the one closest to the proof."

Thereafter in explaining this, he states:

"Because the statement of a well known imam is known to be followed, and for the one whose statement is followed, it becomes more well known than that of the person who gives fatwa to individuals, whose fatwa may be taken or left; because most jurisconsults give fatwa to people privately in their homes or circles, and the public do not consider what they say when taking into consideration what the imam has said."

Therefore, we find that this legal source succeeds the previous three, but is given preference over *qiyas*, as he states in *Kitab al-Umm*: *"Indeed the proof is to be found in the Book of Allah, or the sunnah, or the statement from a companion of the Prophet (peace and blessing be upon him), or the consensus of the Muslims, or qiyas (analogy) based on the previous proofs."*

However when there is a difference between the *sahabah*, Imam al-Shafi'i takes the statement that is closest to revelation first, followed then by that which is closest to *qiyas* as he states: *"I accept the statements (of sahabah) which agree with the Book of Allah or*

the sunnah or ijma', or is soundest in relation to (the principles of) qiyas."

And he also said: *"If some of the companions of the Prophet (peace and blessings be upon him) differ in a matter, some of them stating a position and others stating the contrary, then our approach would be to take the statement of the one who is closest to qiyas."*

The Fifth Source: Qiyas (Juristic Analogy)

Qiyas is the fifth source of Islamic Law, and Imam al-Shafi'i held that if a jurist is unable to find an answer from the previous sources, then he should exert himself in order to arrive at the Islamic ruling, and that *ijtihad* and *qiyas* are synonymous and refer to the same process.

Imam al-Shafi'i' (may Allah have mercy upon him) also said: *"On all matters that affect a Muslim, there is either a binding decision or an indication to the right answer. If there is a decision, it should be followed; if there is no indication as to the right answer, it should be sought by ijtihad, and ijtihad is qiyas."*

And Imam al-Shafi'i in stating the rank of *qiyas* as a source, mentions: *"Knowledge (source of law) after the Book of Allah, sunnah, ijma' and narration of companions, is upon analogy based on these (four prior sources)."*

Furthermore, to support our presentation of the legal sources as we have mentioned above, we find that Imam al-Shafi'i states: *"Knowledge (source of law) is of varying levels:*

Firstly: *the Book of Allah and the authentic sunnah;*

Secondly: *consensus for issues that are not found in the Book of Allah or sunnah;*

Thirdly: *the statement of a sahabi upon which there is no disagreement between them;*

Fourthly: *differing statements of the sahabah in a matter;*

Fifthly: *qiyas based on the earlier sources, and nothing is given precedence while the Book of Allah or the sunnah is present, rather knowledge (source of law) is to be taken from the higher (first)."*

With regards to the proof of *istihsaan*, Imam al-Shafi'i is known to have a strong opinion on this which can be read in the sources. However, he intended the *istihsaan* that is made based upon whimsical motives, which all of the four imams reject as none of them practised such. Rather it is practised and based upon proofs from one of the sources, either *tarjeeh* (preference) of one proof over another, or exemption from a matter based upon a proof and other such modes.

From what has been mentioned earlier, it appears - and Allah knows best - that Imam al-Shafi'i only regards the five previously mentioned things as principal sources of Islamic Law. However, it appears that he does regard other modes such as *al-istishaab* (presumption of continuity), *urf* (custom), and *masalih al-mursala* (considerations of public welfare), worthy of use in deriving Islamic rulings.



Chapter Four

The Most Notable Works of the School

After the works of jurisprudence penned by Imam al-Shafi'i, many more works continued to be produced, some of these were recognised and approved, and their light shone brighter than those of others. The most notable of these were:

Al-Mukhtasar of al-Muzani, *al-Tanbih* and *al-Muhadhdhab*, both of Imam al-Shirazi and both *al-Waseet* and *al-Wajeez* of Imam al-Ghazali. Imam al-Nawawi wrote that these five books are the most notable works of the Shafi'i School and more widely read than any other works. In the 7th century, other works became distinct. While the position of the earlier five books remained, these later works overtook the previous works. These were the writings of the 'Shaykhayn' Imam al-Rafi'i and Imam al-Nawawi (may Allah have mercy upon them).

Thereafter, the effort of authoring works in the Shafi'i School continued into the 10th century, and rich works came to the fore, as did some great scholars. From among the scholars, only four continue to receive attention to this day, and their works have become pivotal for study by the Shafi'i scholars in *fatawa*, with most marginal glosses and teaching revolving around them. The similarity that these works have between them is that they were all dedicated to the work of Imam al-Nawawi - *al-Minhaaj* - and that their authors all came in succession around the same period of time.

These four personalities were:

- 1) Shaikh al-Islam Zakariyyah al-Ansari (d.926 AH)
- 2) His student: Ibn Hajr al-Haytami (d. 974 AH)
- 3) Al-Khateeb al-Shirbini (d. 977 AH)
- 4) Al-Jamal al-Ramli (d. 1004 AH)

In order to remain consistent with what we presented in the chapter on the development of the school, we will be focusing on the most notable works based upon the most influential phases of authorship in the Shafi'i School.

Here we will discuss the most notable works in the Shafi'i School in the following way:

First: The Most Notable Works written during the period of establishment, transmission and stability

1) Kitab al-Umm: of Imam al-Shafi'i (may Allah have mercy upon him).

2) Al-Mukhtasar: of al-Muzani (d. 264 AH) (may Allah have mercy upon him) which is a summary of his teacher Imam al-Shafi'i's *al-Umm*; most of the subsequent Shafi'i scholars paid great attention to this work.

3) Al-Muhadhdhab: of Abi Ishaq al-Shirazi (d. 476 AH) (may Allah have mercy upon him).

4) The works of Imam al-Ghazali (may Allah have mercy upon him): the most noteworthy being *al-Waseet*.

Second: The Most Notable Works authored during the evaluation and verification phase:

1) Al-Muharrar: of Imam Abdul Kareem al-Rafi'i (may Allah have mercy upon him).

2) Al-Sharh al-Kabeer (al-Azeez Sharh al-Wajeez): of Imam al-Rafi'i which is a commentary on Imam al-Ghazali's *al-Wajeez*.

3) Minhaaj al-Talibeen: of Imam al-Nawawi which is a summary of Imam Rafi'i's *al-Muharrar*.

4) Rawdhat al-Talibeen wa-Umdat al-Mufteen: of Imam al-Nawawi which is a summary of Imam Rafi'i's *al-Azeez Sharh al-Wajeez*.

5) The works of Shaikh al-Islam Zakariyyah al-Ansari: particularly *Fath al-Wahab* which is a commentary on his own primer *Manhaj al-Tullab* which he summarised from Imam al-Nawawi's *Minhaj al-Talibeen*.

6) Tuhfat al-Muhtaaaj Sharh al-Minhaaj: which is the work of al-Ansari's student Ibn Hajr al-Haytami.

7) Mughni al-Muhtaaaj ila Ma'rifat Ma'ani Alfadh al-Minhaaj: of al-Khateeb al-Shirbini.

8) Nihayat al-Muhtaaaj ila Sharh al-Minhaaj: of al-Shams al-Deen al-Ramli.

Third: The Most Notable Encyclopaedic Works in the Shafi'i School

1) Al-Hawi al-Kabeer fi Fiqh Madhab Imam al-Shafi'i: of Abi al-Hasan al-Mawardi which is a commentary on *al-Muzani's Mukhtasar*.

2) Nihayat al-Matlab fi Dirayat al-Madhab: of Imam al-Haramayn Abdul Malik al-Juwayni (d. 478 AH) which is also a commentary on *al-Muzani's Mukhtasar*.

3) Al-Bayan fi Madhab Imam al-Shafi'i: of Imam Emad al-Deen Yahya b. Abi al-Khayr al-'Imrani al-Yamani (d. 558 AH) which is a commentary of al-Shirazi's *al-Muhadhdhab*.

4) Al-Majmu of Imam al-Nawawi: which is also a commentary on al-Shirazi's *al-Muhadhdhab*.

Fourth: The Most Notable Works of Fatawa in the Shafi'i School

1) Al-Fatawa al-Kubra al-Fiqhiyyah: of Imam Ahmed b. Mohammed b. Hajr al-Makki al-Haytami.

2) Fatawa al-Ramli: of Shihab al-Deen Ahmed b. Hamza al-Ansari al-Ramli al-Shafi'i (d. 957 AH) which was compiled by his son Shams al-Deen Mohammed b. Ahmed b. Hamza al-Ramli.



Chapter Five

The Most Frequently Referenced Nomenclature of the School

The scholars of the four juristic schools employ the use of nomenclature in their books which they rely upon to express their juristic positions and preferences with the aim of brevity, particularly since much repetition occurs in these works. This nomenclature varies in meaning from juristic school to school, so it is important for the one who seeks to understand the Shafi'i School to become familiar with the nomenclature in order to benefit fully.

In this section we will identify the nomenclature based on the following headings:

Firstly: Nomenclature used to express the presence of various statements and opinions

Al-Qawl al-Qadeem: This is the statement (position) held by Imam al-Shafi'i in Baghdad before he arrived in Egypt.

Al-Qawl al-Jadeed: This is the statement (position) held by Imam al-Shafi'i after taking residence in Egypt.

Al-Aqwaal: This refers to the presence of varying positions held by Imam al-Shafi'i.

Al-Qawlaan: This refers to the presence of two varying positions held by Imam al-Shafi'i and the dominant position is known through his authorship.

Al-Turuq: This refers to the presence of differences among the students of Imam al-Shafi'i in the narrative of the school.

Al-Awjuh or al-Wujuh: This refers to the presence of differences among the students of Imam al-Shafi'i, regarding the opinions that they reached after their deduction based upon the

general principles of derivation within the school that were codified by Imam al-Shafi'i.

Secondly: The most notable nomenclature used for choosing the preferred and dominant position

Al-Madhab: This refers to the presence of difference among the students of Imam al-Shafi'i in the soundest position of the school, and that the '*madhab*' is the preferred and dominant or relied-upon position.

Al-Nass: This refers to it being a position of Imam al-Shafi'i and it is the most dominant of all differing positions.

Al-Mansoos: This refers to it being either a statement of Imam al-Shafi'i or an opinion of one of his students; and it is the most dominant of all the differing positions occurring after Imam al-Shafi'i.

Al-Mashoor: This refers to the presence of differing positions held by Imam al-Shafi'i and that it is the dominant position, and the contrary opinions are weak due to the weakness of their *madrak*.

Al-Azhar: This refers to the presence of differing positions held by Imam al-Shafi'i and that it is the dominant position, and the contrary opinions are strong due to the strength of their *madrak*.

Al-Asahh: This term is used to identify the dominant position when there are two or more differing opinions among the students of Imam al-Shafi'i which are strongly supported.

Al-Sahih: This term is used to identify the dominant position when there are two or more differing opinions among the students of Imam al-Shafi'i which are weakly supported.

Al-Rajih: This refers to the dominant position of Imam al-Shafi'i and it is identified by his direct students or textual evidence.

Fi Qawlin / fi Wajhin: This refers to the presence of differing

opinions and the author is unsure if they originate from Imam al-Shafi'i or from his students, and that one of the opinions is weak; and opposing it is an opinion of Shafi'i that is *azhar* or *mashoor*, or an opposing opinion from his students that is *asahh* or *sahih*.

Thirdly: Nomenclature used in relation to clarification

Muqtada al-Kalam / Qadiyat al-Kalam: It refers to the ruling upon a matter without elaboration.

Hasil al-Kalam: It refers to the elaboration of an issue after overview.

Muhsal al-Kalam: It refers to the overview of an issue after elaboration

Tahreer al-Kalam / Tanqeeh al-Kalam: It refers to the occurrence of a shortcoming in the original phrase or the presence of prolixity.

Qal ba'yd al-Ulama: 'A scholar has said'. It is used when the person referred to is still alive as they may change their position, when the person dies they would use his name.

Fourthly: Nomenclature used in relation to scholars

Imam: Refers to Imam al-Haramayn Abdul Malik b. Abd Allah al-Juwayni (d. 478 AH).

Al-Qadhi: Refers to al-Qadhi Hussain.

Al-Shaykhaan: Refers to the two Imams al-Rafi'i' and al-Nawawi.

Al-Shoyoukh: Refers to Imams al-Rafi'i', al-Nawawi and Subki.

Al-Qadiyaan: Refers to Imams al-Mawardi and al-Ruwyani.

Fifthly: nomenclature (abbreviations) used by latter-day scholars in relation to scholars

- (طب): Al-Tablawi al-Kabeer
(دم): Dumayri Ali al-Minhaj
(م ر) : Shams al-Ramli and sometimes only (م) is used
(سم): Ibn al-Qasim al-'Abbadi
(حل) (ح ل) : Ali al-Hala[bi
(ق ل): Al-Qalyubi
(ع ش): Ali al-Shabramulissi
(زي): Ali al-Ziyadi
(أ ج) : 'Atiyah al-Ajhowri
(ح ف): Mohammed al-Khafni
(خ ط): Al-Khateeb al-Shirbini
(ب ج): Mohammed al-Buhayrami
(ح) (ح ج): Ibn Hajr al-Haytami
(ع ب): Ibn Hajr in Sharh al-'Ubaab
(ج م): Al-Jamal in referring to al-Minhaj
(س ل): Al-Burhan al-Shaykh Sultan al- Mizaji
(ب ر): Al-Shaykh al-Burmawi
(ع ن): Al-'Inani
(خ ض): Al-Shaykh Khidr al-Shawbari
(م د): Mohammed al-Madabighi

(باج) : Mohammed al-Bajuri

(شق): ‘Abd Allah al-Sharqawi

(حميد): Abdul Hameed al-Daghastani



Imam Ahmed b. Hanbal's School of Thought

All praises are for Allah, Lord of the Worlds; and may the choicest salutations and peace be upon the Prophet, his family and all his companions. And as to what follows:

I have perused the Introduction to Hanbali Fiqh which was produced by the Islamic Research Team, which comprises of the biography of Imam Ahmed and his methodology in deriving rulings, the dominant positions held by the scholars of the School as found in the works al-Tahreer and al-Kawkab al-Muneer and their commentaries, as well as mentioning the most important fiqh works in the school such as al-Muntaha and al-Iqna' - which form the basis of fatawa among the latter day scholars - and the most frequent nomenclature used within the school, as well as many other points of benefit. I have found it beneficial for students of knowledge, providing them with their requirements in this field. The Ministry of Awqaf and Islamic Affairs represented by the Department of Fatwa is to be thanked for this noble endeavour that serves to preserve the heritage of this (Muslim) nation, especially in the realm of fiqh and its founding principles.

May Allah bless those who have worked on this noble project and accept it from them, for indeed He alone is capable of such. Furthermore, may the choicest salutations and peace be upon the Prophet, his family and all his companions.

Shaikh Adnan b. Salim al-Nahaam*

** A Hanbali jurist who is from the foremost students of the renowned scholar and jurist of Kuwait, Shaikh Mohammed b. Sulaiman al-Jarrah (may Allah have mercy upon him). He remains the Imam of his shaikh's mosque, where he teaches the basic primers and commentaries of numerous Hanbali works such as Daleel al-Talib, Akhsar al-Mukhtasarat, Rawd al-Murbi and other works. He supervises a renowned study circle where he teaches Hanbali Fiqh to students who attend from all over Kuwait. He has authored numerous marginal glosses on Hanbali and Arabic works, some of which are yet to be published. Among his works are a marginal gloss on Akhsar al-Mukhtasarat of Ibn Balbaan, a marginal gloss on Muntaha al-Iradaat with commentary of al-Bahuti, a marginal gloss on Sharh Ibn Aqeel (incomplete), and a marginal gloss on Qatr al-Nada of Ibn Hisham.*

Imam Ahmed b. Hanbal's School of Thought

The Hanbali School of Thought is the fourth of the four approved Islamic schools by virtue of the date it was founded. Its name originates from that of its founder, the great *hadith* scholar and jurist Ahmed b. Hanbal al-Shaybani (d. 241 AH). He was known for his strict reverence of the sacred texts, and the statements of the *sahabah* (companions) upon which he founded the majority of his juristic positions. Those who ponder his incredible ability to memorise, his depth of knowledge, and the prodigious number of teachers that he was blessed with, can begin to perceive the astounding heights reached by this Imam in his time, to the extent that he was unparalleled, as witnessed by his peers.

In order to expound clearly on this subject, we will discuss Imam Ahmed b. Hanbal's School of Thought over the following chapters:

Chapter One: Biography of the Founder

Chapter Two: The Development of the School and its Historical Phases

Chapter Three: The Fundamental Principles of Derivation in the School

Chapter Four: The Most Notable Works of the School

Chapter Five: The Most Frequently Referenced Nomenclature of the School

Chapter One

Biography of the Founder

Firstly: His Name and Lineage

He is Abu Abd Allah Ahmed b. Mohammed b. Hanbal b. Hilal b. Asad al-Shaybani al-Marwazi al-Basri al-Baghdadi and his lineage meets with that of the Prophet (peace and blessings be upon him) at Nizar b. Ma'ad b. 'Adnan. His mother's lineage is similar due to her belonging to the *Bani 'Aamir* clan of the *Bani Shayban* tribe. Her name was Safiyyah.

Secondly: His Birth and Upbringing

Imam Ahmed b. Hanbal (may Allah have mercy upon him) was born in Baghdad in the month of Rabi al-Awwal in the year 164 AH. His father served in the army in Merv and was posted to Baghdad, which meant that during his mother's pregnancy, she had to leave Merv and travel to Baghdad where she gave birth to him. When he was three, Imam Ahmed's father passed away (at age thirty), leaving him orphaned and in the full time care of his mother. She gave him a good upbringing, focusing on teaching him piety and knowledge, choosing to send him at an early age to the local school where he studied Qur'an. His dedication and intelligence showed within a short period of time, and he became distinguishable among his peers. His teacher would sometimes forego the class fee in recognition of the help that the young Ahmed was proffering to the students who were not as capable as he was. In the same way that he was studious in his childhood years, he became distinguishable in his adolescence for his scrupulousness and self-discipline.

Thirdly: His Seeking of Knowledge

Ever since childhood, Imam Ahmed had a passion for seeking

knowledge; so when he grew into a young sixteen year old adult, his strong appetite, dedication and exertion propelled him to travel seeking knowledge throughout Baghdad, Kufa, Basrah, Makkah, al-Madinah, Yemen, Greater Syria, and the Arabian Peninsula. Imam Ahmed penned down volumes of knowledge and became so engrossed in this pursuit that he did not seek employment or marry until after the age of forty when he had already achieved many of his scholarly goals.

Imam Ahmed b. Hanbal's (may Allah have mercy upon him) earnestness in seeking knowledge, and desire to sit towards the front of the lessons in order to hear well, meant that he would often leave his home well before the *Fajr* prayers, and his mother would sometimes grasp his clothing and say: "*Wait until the people wake up or make the call to prayer.*"

The first subject of his focus when he started seeking knowledge was *hadith*. He attended the circle of Abu Mu'awiyah Hushaym b. Basheer and spent four years studying with him from 179 AH to 183 AH, more time than he spent with any other scholar. He also penned down *hadith* from Qadhi Abu Yusuf the student of Abu Hanifah, and spent time studying with Abdur Rahman b. Mahdi and Abu Bakr b. Ayyash. Even after becoming one of the greatest living scholars, he did not shy away from the circles of knowledge and would sit with the younger students to listen and pen down what he heard, without ever becoming bored. On one occasion, a man saw Imam Ahmed carrying an ink pot and said to him: "*O' Abu Abd Allah, even after reaching your status and becoming the Imam of the Muslims you do this?*" Imam Ahmed answered: "*With the ink pot to the grave.*" And it is narrated that he also said: "*I will continue seeking knowledge until I enter the grave.*"

Fourthly: Imam Ahmed's Most Notable Teachers

Imam Ahmed (may Allah have mercy upon him) studied with a multitude of scholars in a wide spectrum of subjects, but most of his

time was dedicated to the sciences of *hadith* due to the reverence he had for the *sunnah* of the Prophet Mohammed (peace and blessings be upon him). He narrated from approximately 414 male and 1 female teacher. The most notable of his teachers were:

Ya'qub b. Ibrahim, Qadhi Abu Yusuf (d. 182), Hushaym b. Basheer (d.183 AH), Isma'il b. Ulayyah (d.193 AH), Wakee b. Jarrah (d.197 AH), Sufyan b. Uyainah (d.198 AH), Sulaiman b. Dawood b. al-Jarood, Abu Dawood al-Tayalisi (d. 204 AH), Mohammed b. Idris al-Shafi'i (d. 204 AH), Abdur Razzaq b. Hamam al-Sanani (d. 211 AH), Nu'aym b. Hamad (d. 228 AH), Yahya b. Mu'een (d. 233 AH), and Ishaq b. Ibrahim b. Rahaway (d. 238 AH).

Fifthly: Imam Ahmed's Most Notable Students

Imam Ahmed's reputation spread over the horizon and students of knowledge would travel to him from far off lands to attend his assemblies of *hadith* in order to listen to the narrations and benefit from his deep understanding of the religion. The number of dedicated students that he had was counted at 577, not including those who attended his assemblies whose names were not recorded. Some biographers have stated that his assemblies would contain more than five thousand attendees who would either pen down knowledge, listen, or attend to benefit from the Imam's decorum. Furthermore, as with other great scholars, we find that some of his own teachers also sat in his lessons to benefit from him.

The most notable of his students were:

Mohammed b. Isma'il al-Bukhari (d. 256 AH), Ahmed b. Mohammed b. Hani al-Ta'I, Abu Bakr al-Athram (d. 261 AH), Muslim b. Hajjaj al-Nishapuri (d. 261 AH), Ubaidullah b. Abdul Kareem, Abu Zura' al-Razi (d. 264 AH), Salih b. Ahmed b. Hanbal (d. 266 AH), Hanbal b. Ishaq b. Hanbal (d. 273 AH), Ishaq b. Ibrahim b. Hani al-Nishapuri (d. 275 AH), Sulaiman b. Ash'ath Abu Dawud al-Sijistani (d. 275 AH). Harb b. Ismail al-Karmani (d. 280 AH), Abd

Allah b. Ahmed b. Hanbal (d. 290 AH), Mihna b. Yahya al-Shami, and many others.

Sixthly: Imam Ahmed's Knowledge and Understanding

Imam Ahmed b. Hanbal (may Allah have mercy upon him) was an Imam in *hadith* and *sunnah*, and he is renowned for his knowledge in these areas more than other areas. However the reality is that the Imam's knowledge combined between the memorisation of a wide corpus of *hadith* and a thorough understanding of their application in *fiqh*. Indeed, he was an Imam of *fiqh*, and when he spoke on matters relating to *fiqh*, he spoke as someone who had critiqued the various sciences and as someone who had deep insight.

Those who observe the *fiqh* teachers of Imam Ahmed (may Allah have mercy upon him) notice that he started his studies with Qadhi Abu Yusuf, the student of Imam Abu Hanifah (may Allah have mercy upon him) and later on he studied with Imam Mohammed b. Idris al-Shafi'i', (may Allah have mercy upon him) which confirms that he had a wide perception of *fiqh* and was most deserving of the description Abu l-Qasim al-Hubuli gave: "...When Ahmed b. Hanbal was asked for a ruling, (it was as if) the knowledge of the world was between his eyes."

Ibrahim al-Harbi said: "*I saw Ahmed b. Hanbal and it was as if Allah had gathered for him the various branches of knowledge of the past and present people, he would speak as he wished and retain what he wished.*"

Ahmed b. Sa'eed al-Darimi said: "*I have never seen anyone with black hair (young) who had committed to memory the prophetic hadith more than Ahmed b. Hanbal, nor anyone who understood and perceived its meanings better than him.*"

From the signs showing his depth of knowledge and understanding (may Allah have mercy upon him), is that he would be asked about the positions held by the jurists of other schools, and he would respond

with such detail that one would perceive his expertise. Ibn Taymiyyah states: “...*Hanbal and Ahmed b. Faraj would ask Imam Ahmed regarding the rulings of Malik and the People of Medina; as Ishaq b. Mansoor and others would ask regarding the rulings of Sufyan al-Thawri and others; as al-Maymoon would ask him about the rulings of al-Awza'i; as Ismail b. Sa'eed al-Shalanji would ask him about the rulings of Abu Hanifah and his students...*”.

We also find that some of the greatest jurists and scholars bore witness to the depth of understanding and lead role that Imam Ahmed occupied, some of these scholars were: Abdur Razzaq al-San'ani, Abu Ubayd al-Qasim b. Sallam, Abu Thawr, al-Shafi'i', Ali b. al-Madeeni, Ibn Wara, al-Nasai', Salih b. Jazara, Al-Boushanji, Abu Zur'ah al-Razi, Ishaq b. Rahaway, Abu Hatim al-Razi, Yahya b. Mu'een, and many others.

From the most distinguished of his teachers from whom he learnt *fiqh* were Mohammed b. Idris al-Shafi'i' and Ishaq b. Rahaway.

As for his studies with Imam al-Shafi'i', we know that their lives overlapped for more than 40 years, and that he sat and studied with him during his two extensive visits to Baghdad, and again during his own journey to Makkah. During these lessons, Imam al-Shafi'i' was exposed to the brilliance of Imam Ahmed and his deep insight in juristic matters and knowledge, such that he stated: “*Ahmed is an Imam in eight specialisations: He is an Imam in hadith, he is an Imam in fiqh, he is an Imam in language, he is an Imam in Qur'an, he is an Imam in poverty, he is an Imam in ascetism, he is an Imam in scrupulousness and he is an Imam in the sunnah.*”

As for his teacher Imam Ishaq b. Rahaway (may Allah have mercy upon him), his relationship was very close and they would spend time together studying and revising during their journeys to meet and study with hadith scholars.

Ibn Taymiyyah states: “*Imam Ahmed's concurrence with al-Shafi'i' and Ishaq b. Rahaway was more than what he held for other jurists. His principles are more closer to their principles than others, and he praised*

and honoured them, preferring the principles of their school over those who differed with them; and he held that the principle sources of derivation employed by the jurists of Ahl al-Hadith were more accurate than those of others, and al-Shafi'i and Ishaq b. Rahaway are the most esteemed jurists of the Ahl al-Hadith School in their era."

Despite the great effect that these two scholars had upon him, we find that Imam Ahmed decided to establish his own school based upon his independent guidelines for the derivation of Islamic Law that would soon be followed by coming jurists of the *Ahl al-Hadith School*. His methodology for deriving Islamic Law was to resort to the Qur'an, then to the *sunnah*, then to statements of the sahabah. As for *qiyas*, it would come after these principal sources. Nothing is stronger in proving this methodology, than his many *fatawa* that depended solely on the divine texts and statements of the sahabah.

Shaikh Mohammed Abu Zahra states: *"It is befitting for us to say that Imam Ahmed was an Imam in hadith and through his being an Imam in hadith, he became an Imam in fiqh and his fiqh affected his personality, his thinking, his attitude and his appearance... and that which has reached us from him, such as his statements and fatawa indicate to us that he was a jurist who was greatly influenced by the manner of the traditionists."*

From the things that prove that Imam Ahmed was independent of his teachers in his methodology and understanding of *fiqh*, is the numerous times he contradicts the positions of his teachers - found in the collections of responsa that his students wrote from him. We also witness his rationale, discussion of evidences, and meticulousness when deriving rulings that clearly show his maturity and independence in *fiqh*.

Seventhly: His Writings

Imam Ahmed b. Hanbal (may Allah have mercy upon him) is known for his expansive and varied works which demonstrate his immense

knowledge, multitude of narration, and deep understanding. He wrote approximately thirty works covering subjects on Islamic creed, Qur'anic sciences, *hadith* sciences, and *fiqh*; and he was instrumental in the composition of a further two-hundred works based upon his edicts and lessons.

The greatest and most renowned of his works is the *Musnad* which is a colossal encyclopedic compilation of Prophetic narrations supported by full chains of narration from the Imam through his teachers, and back to the Prophet (peace and blessing be upon him). Other notable works of the Imam include:

Fada'il al-Sahabah, al-Ilal wa Ma'raifat l-Rijaal, al-Asami wa l-Kuna, al-Zuhd, al-Radd ala Zanadiqa wa l-Jahmiyyah, al-Nasikh wa l-Mansukh, al-Muqadam wa l-Mu'akhar fi l-Qur'an, al-Manasik al-Kabeer, al-Manasik al-Sagheer and others.

Eighthly: The Praise of the Scholars Regarding Imam Ahmed

Imam Ahmed (may Allah have mercy upon him) possessed sound knowledge, immaculate decorum, high morals, and a profound level of academic integrity, thus becoming a true role model and a sign of Allah for all scholars in his time. Many of these scholars praised the Imam and below we have provided some of their statements:

Imam al-Shafi'i (may Allah have mercy upon him) said: "*I departed from Baghdad and did not leave behind anyone more scrupulous, pious, knowledgeable and possessing a deeper understanding than Ahmed b. Hanbal.*"

Ali b. al-Madeeni (may Allah have mercy upon him) said: "*I have taken Ahmed b. Hanbal as an Imam in the affairs that are between me and Allah and who is capable of achieving what Abu Abd Allah has?*"

Abu Ubayd al-Qasim b. Sallam (may Allah have mercy upon him) said: "*The people of knowledge are four: Ahmed b. Hanbal and he has the strongest understanding of them; Ali b. Al-Madeeni and he is*

the most knowledgeable of them; Yahya b. Mu'een and he was the most prolific at recording it; and Ibn Abi Shaybah and he had committed the most to memory."

Yahya b. Mu'een (may Allah have mercy upon him) said: *"People wanted me to be like Ahmed b. Hanbal, no by Allah, I will never be like Ahmed."*

Bishr b. Harith al-Hafi (may Allah have mercy upon him) was once asked about Imam Ahmed and he said: *"I am asked about Ahmed b. Hanbal! Indeed Ahmed entered the furnace and came out as red gold."*

Abu Zur'ah al-Razi (may Allah have mercy upon him) said: *"My eyes have never seen the likes of Ahmed b. Hanbal."* Abd Allah b. Mohammed b. Abdul Kareem asked: *'In terms of knowledge?'* He answered: *"In terms of knowledge, ascetism, fiqh, consciousness and all good actions, my eyes have never seen anyone like him."*

Perhaps the greatest sign of his leadership, virtue and status was his unwavering fortitude and patience during the Inquisition that started in the reign of Abbasid Caliph al-Mamoon and continued through the reign of the caliphs al-Mu'tasim and al-Wathiq. During this time, they forced people to adopt the fallacious belief in the createdness of the Qur'an. During the Inquisition, many scholars wavered under the threat of physical harm if they did not accept these beliefs, however, Imam Ahmed stood firmly and steadfastly upon the truth like a mountain pegged into the earth in order to defend the proper creed of Islam. He stood alone, but represented the entire Muslim nation. He refused to be deceptive in his faith, despite all the trials he faced by way of torture and imprisonment; and through him Allah protected many from falling into misguidance. This continued until Allah relieved him of all suffering when it came time for the appointment of the Caliph al-Mutawakil, who exonerated and released him. In this way, the creed of *Ahl l-Sunnah* (the people of Prophetic Tradition) became victorious over all falsehood.

Ninthly: His Passing Away

On the 2nd of Rabi al-Awwal, Imam Ahmed (may Allah have mercy upon him) developed a fever and became very unwell; his condition slowly deteriorating over a period of nine days. During this time he never moaned from the pain, other than on the eve of his passing.

Imam Ahmed passed away in Baghdad at noon on Friday 12th of Rabi' al-Awwal 241 AH at age 77. He was buried after the Asar prayer. His funeral prayer was attended by such a great multitude of people as had never been witnessed in the history of Baghdad.

May Allah have mercy upon the great Imam and provide him with a dwelling in the expansive gardens of Paradise.



Chapter Two

The Development of the School and its Historical Phases

Every approved school of thought that has been established throughout history went through numerous phases of development, sometimes over a period of centuries until it reached a point where its principles of derivation were defined and its juristic rulings began to be issued according to them. This responsibility fell on the scholars who dedicated themselves to teaching and authoring the *fiqh* of the school until it became well known, and these written works would then become the focus of attention for all dedicated students of knowledge who wanted to acquire a deeper understanding of the school and its principles. It is possible for us to define the phases that the Hanbali School went through as the following:

The First Phase: The Founding and Establishment of the School 204 - 241 AH.

The founding phase of this school started when Imam Ahmed b. Hanbal (may Allah have mercy upon him) assumed his seat to teach and issue *fatawa* in 204 AH, at age forty. Before this age, he felt that it was necessary for him to free himself entirely in the pursuit of knowledge, before he busied himself in teaching and issuing *fatwa*, which greatly helped to strengthen his knowledge and provide him with a versatile ability when exercising *ijtihad*.

Anyone who observes the methodological approach to study that Imam Ahmed employed, becomes familiar with the position he achieved and the maturity of understanding that he possessed. This is due to his studying with a multitude of scholars in a plethora of Islamic disciplines and sciences, which impacted his defining of the juristic and scholarly principles of his school.

Taking into account the scholarly excellence that Imam Ahmed possessed through his phenomenally broad preservation of sacred texts, maturity in *fiqh* and depth of knowledge, many students of knowledge began to look to him, attend his lessons, record his narrations and request his *fatawa* in their affairs. In this way, his knowledge and thoughts began to spread throughout society. His rulings which extended across a wide spectrum of subjects such as Islamic creed, *hadith*, *fiqh* and *usool al-fiqh* were collected in more than 200 works that he oversaw in his lifetime.

The Second Phase: The Transmission and Development of the School (241 - 403 AH)

This phase is regarded as an extension of the previous phase as the students of Imam Ahmed b. Hanbal played an important role in transmitting the school of their teacher to other students through their lessons, books and correspondences. Al-Khallal mentions that people would correspond with Salih the son of Imam Ahmed, from Khurasan and other places, requesting his father's position regarding various rulings; and this compilation contains many beneficial statements.

Ibn Abi Hatim (may Allah have mercy upon him) states: "*Abd Allah wrote to me with rulings of his father regarding hidden defects in hadith.*" Abd Allah had also compiled responses from his father into a book that was arranged according to subject headings of *fiqh*.

Another student of Imam Ahmed's who compiled the responses studied with him, was Ahmed b. Mohammed b. Hani al-Ta'I al-Athram (d. 261 AH).

Another student of Imam Ahmed whose circles of knowledge became popular was Ahmed b. al-Khaseeb b. Abdur Rahman. He taught *fiqh* in Tarsous and conveyed numerous beneficial responses of Imam Ahmed, as mentioned by al-Khallal.

Another example of the role Imam Ahmed's students played in

spreading his knowledge and *fiqh* is given by al-Khallal who states: “*Abu Bakr al-Marrudhi set off on an expedition and was followed up to Samarra by throngs of people (out of respect). He told them to stop and return, and some did; however approximately fifty thousand continued to follow him. It was said to him: “Abu Bakr praise Allah, because this is a proof of your knowledge that has spread.” He started crying and said: “This is not my knowledge, rather it is that of Ahmed b. Hanbal.”*”

And no evidence is stronger in proving that the students of Imam Ahmed played a key role in transmitting his rulings, *fiqh* and knowledge, than that large and noble compendium of knowledge that Imam al-Khallal conveyed from them in his unique work *al-Jami li Uloom al-Imam Ahmed*. He had studied with a large number of Imam Ahmed b. Hanbal’s students and conveyed the responsa that they narrated from Imam Ahmed, and in this way it came down generation after generation up until the present day.

Perhaps another sign of the effort that the Imam’s students contributed to spreading the school, is their decision to assume positions in the judiciary; this is due to the fact that judgments are usually given based upon the *fiqh* that a judge acquires at the hands of his teachers. Several of the Imam’s students worked as judges, including his son who served in Tarsous and then in Isfahan. Another example was al-Hasan b. Musa al-Ashyab (d. 209 AH) who served as a judge in Mosul, Homs and Tabaristan.

Thereafter, the students of Imam Ahmed’s direct students took the responses from their teachers and began the process of collating, arranging, analyzing, and then selecting the most accurate responsa of Imam Ahmed b. Hanbal. This phase is known as that of the *Tabaqah al-Mutaqadimeen* (the First Generation) and it ended with the passing away of al-Hasan b. Hamid in 403 AH.

During this period, numerous scholars who played a pivotal role in developing and spreading the school surfaced; and the most distinguished of them was Ahmed b. Mohammed al-Khallal (d. 311

AH). He exerted himself in tracing the students of Imam Ahmed, meeting them and noting down the juristic rulings and narrations of Imam Ahmed along with their chains, until he compiled a great number of reports in his book *al-Jami li l-Uloom Imam Ahmed*. This work caught the attention and esteem of scholars and students alike; and from this time, we notice that Imam Ahmed's school began to gather a large following, and included in their ranks were many erudite scholars. It is around the same time that we find an element of stability appearing in the works transmitting the responsa of Imam Ahmed in addition to the reports found in *al-Jami* of al-Khallal.

During this phase, many scholars of the school began to compile the rulings of the school into treatises and epitomes. The most distinguished of these writers was Imam Abu l-Qasim Umar b. al-Husain al-Khiraqi (d. 334 AH), who authored the first epitome in the Hanbali School. It was arranged according to subject headings of *fiqh* and is known as *Mukhtasar al-Khiraqi*.

Another writer was Abu Bakr Abdul Aziz b. Ja'far also known as Ghulam al-Khallal (d. 363 AH). He spent his time analyzing the work of al-Khallal, summarising it and selecting the most accurate narrations. However, the compilation of Imam Ahmed's *fatawa* and narrations with their chains of narration was not limited to al-Khallal's work, rather he was followed by al-Hasan b. Hamid (d. 403 AH), who authored *al-Jami fi l-Madhab* which consisted of approximately four hundred parts arranged by subject headings of knowledge.

We also see during this phase, the compilation of works that sought to offer the reader the chosen or dominant position in the school such as *al-Nasiha* of Abu Bakr al-Ajurry (d. 360 AH), or two dominant opinions such as *Kitab al-Qawlayn* of Abdul Aziz Ghulam al-Khallal. We also find works dedicated to specific areas of *fiqh* such as *al-Manasik* of Ibn Bata al-Ukburi (d. 387 AH).

Furthermore, scholars dedicated works to the nomenclature and fundamental principles of derivation in the school, as we find in the works *Usool al-Fiqh* and *Tahzeeb al-Ajwiba* both of al-Hasan b.

Hamid (may Allah have mercy upon him).

The Third Phase: The Verifying, Filtering and Redacting of the School (403 - 884 AH)

This phase started in the fifth century and continued up to the end of the ninth century, which was from the passing of al-Hasan b. Hamid in 403 AH until the passing of al-Burhan b. Muflih in 884 AH. After the rulings of the school had become known, the need arose to ensure their reliability and preservation by filtering out any anomalous or weak reports, after which was the process of arranging the approved rulings under their respective *fiqh* chapter headings. This responsibility was taken up by the scholars who would become known as the *Tabaqah al-Mutawasiteen* (the Middle Generation), who set the general guidelines in relation to the transmission of rulings narrated from Imam Ahmed or his direct students. They also derived the substantive laws from the principal laws and selected the preferred narrations, opinions, and feasible rulings. They also paid attention to developing and enriching the Hanbali *usool al-fiqh*, studying the various branches of *fiqh* in light of the general guidelines of the school, setting specific guidelines for the school, coining nomenclature that help to identify the statements of Imam Ahmed, as well as clarify preferred opinions, and other similar tasks.

Among the most distinguished scholars in this phase were Qadhi Abu Ya'la Mohammed b. al-Husain b. al-Farra (d. 458 AH), Abu al-Khattab Mahfoodh b. Ahmed b. al-Kalwadhani (d. 510 AH), and Ali b. A'qeel (d. 513 AH), all of whom in their written works, paid great attention to expounding on the fundamental principles of derivation in the school. During this period, we also find that scholars paid great attention to the epitome of al-Khiraqi. More than twenty works were dedicated to it. Some were commentaries, others were didactic poems and glosses; the most famous of these being *al-Mughni*, which was authored by al-Muwaffaq b. Qudama al-Maqdisi (d. 620 AH), who along with al-Majd b. Taymiyyah (d. 652 AH) was the

senior authority in the school during his time.

This period also witnessed the appearance of numerous scholars who contributed as verifiers of the school including Shaykh al-Islam Ahmed b. Abdul Halim b. Taymiyyah (d. 728 AH), Shams al-Deen Mohammed b. Abi Bakr b. Qayyim al-Jawziyyah (d. 751 AH), Shams al-Deen Mohammed b. Muflih (d. 763 AH), Abdur Rahman b. Ahmed b. Rajab al-Hanbali (d. 795 AH), and Burhan al-Deen Ibrahim b. Mohammed b. Muflih (d. 884 AH).

The Fourth Phase: The Stability and Continuity of the School (885 AH - present)

This phase is best described as the *Tabaqah al-Muta'akhireen* (the Latter Generation), and it started towards the end of the ninth century - around 885 AH - and continues to the present time. During this period, the school found stability in following the approved rulings and written works of the previous generations as they felt that these reflected the rulings and principles upon which the school was founded. Scholars in this period sufficed with writing summaries, commentaries, super-commentaries, marginal glosses, addenda, preferred positions, contemporary *fatawa*, and similar works. Furthermore, we also find that these works were subjected to evaluation and verification, with the dominant position or positions of the school highlighted.

Among the most distinguished verifiers in this period were: Abul Hasan Ali b. Sulaiman al-Mardawi (d. 885 AH), Yusuf b. Abdul Hadi (d. 909 AH), Musa b. Ahmed al-Hajawi (d. 968 AH), Mohammed b. Ahmed al-Futuhi (d. 972 AH), Mari' b. Yusuf al-Karmi (d. 1033 AH), and Mansoor b. Yunus al-Buhuti (d. 1051 AH).

Following in the footsteps of these scholars, are the contributions of living scholars who continue to revive and spread the school through their editing, writing, teaching and researching, at both the individual and collective level. We also find many world-renowned

centres of research and Islamic universities making use of modern tools of academic research to obtain higher degrees of analysis and revive interest in the Hanbali School.



Chapter Three

The Fundamental Principles of Derivation in the School

The principles of derivation set by Imam Ahmed do not vary considerably from those of the other Imams of jurisprudence, except in their ranking. The principles upon which Imam Ahmed established his school can be defined as:

1) Nass (divine texts)

Imam Ahmed b. Hanbal (may Allah have mercy upon him) regarded the Qur'an and authentic *sunnah* as the primary repository for Islamic law. Both of these sources are regarded by him to be at the same level when explaining matters related to Islamic Law, however Qur'anic texts are held in higher esteem than those of the *sunnah*.

Imam Ahmed would issue verdicts based upon the contents of the divine texts; he would not pay heed to those who contradicted it through their actions, discretionary opinions, analogical reasoning, the contrary statement of a companion, or even the statement which did not appear to have any contrary opinion, because he did not regard this as *ijma'*.

Ishaq b. Ibrahim b. Hani reports: *"Someone asked Abu Abd Allah (Imam Ahmed): 'A man is among his people and is asked about a matter in which there is difference; what should he do?' Imam Ahmed replied: 'He should give fatwa according to the Qur'an and sunnah and that which does not agree with the Qur'an and sunnah, refrain from it.'"*

Mohammed b. Hakam reports that Imam Ahmed stated: *"If there is a narration from the Prophet of Allah (peace and blessings be upon him) which is left in place of the statement of a sahabi or tabi'ee, then this is to be rejected because it is based upon violation and interpretation. Then he mentioned the hadith of Aisha (may Allah be pleased with her) who*

reports the Prophet (peace and blessings be upon him) said: 'Whosoever does an action that is not according to our affair, it is to be rejected.' Then Imam Ahmed said: 'Whosoever does something contrary to a narration from the Prophet of Allah (peace and blessings be upon him) or the sunnah, it is rejected from him.'"

Al-Athram reports: *"I heard from Abu Abd Allah Ahmed b. Hanbal the following regarding a matter: 'If the matter is covered by a hadith of the Prophet (peace and blessings upon him) we do not take the statement of any of the sahabah, even if they are from the ranks of the caliphs.'"*

2) Al-Ijma' (consensus)

It is the unanimous agreement on a legal matter by the *mujtahid* (senior-jurists) of the Muslim nation in any period of time after the passing of Prophet Mohammed (peace and blessings be upon him).

Imam Ahmed (may Allah have mercy upon him) regarded it as one of the approved principal sources of derivation, as his students and followers conveyed from him.

Qadhi Abu Yala states: *"Ijma' is a binding proof which must be followed and is impermissible to contravene; it is not possible for the entire Muslim nation to have consensus on something incorrect."*

Abd Allah and Abu l-Harith narrates from Imam Ahmed (may Allah have mercy upon him): *"If the sahabah differ, he would not depart from their statements; then someone asked: 'What if there is consensus, can one leave their statements?' He replied: 'That is a foul statement - one of the people of innovation - one should never depart from the statements of the sahabah even if they differ.'"*

According to some narrations, we find that Imam Ahmed rejected the possibility of *ijma'*, however these narrations were regarded by his students as displaying his scrupulousness so that he would not claim something (consensus) that he did not have full knowledge of its

occurrence. Others interpreted it as meaning that he rejected the claim of *ijma'* because those claiming the same were unaware of the differences among their predecessors. Yet others hold that he rejected the possibility of *ijma'* after the era of the *sahabah* (may Allah be pleased with them) due to the increased distance between lands and the large number of *mujtahids*; so he was no longer able to have full knowledge of their differences.

3) Fatawa of the sahabah for which no known contrary opinion exists

If Imam Ahmed (may Allah have mercy upon him) came across a *fatwa* from one of the *sahabah* for which no known contrary opinion existed, he would take it as a means of derivation and would not skip it for other sources. He preferred it to juristic opinion, actions (those of the people of al-Madina), *qiyas*, *mursal* and weak hadith; to the extent that some of his students regarded it as *ijma'*.

Abu Dawud al-Sijistani (may Allah have mercy upon him) narrates that Imam Ahmed said: *"I have never responded with regards to a ruling except from the hadith of the Prophet (peace and blessings be upon him) if I able to do so, or from the sahabah, or from the tabi'een. If I find from the Prophet (peace and blessings be upon him) I do not resort to anything else; if I do not find from the Prophet (peace and blessings be upon him) then from the four rightly-guided caliphs, and if I do not find from them, then I resort to the sahabah preferring the senior, then those junior; and if I do not find then the tab'ieen and then the generation after them."*

Mohammed b. Hakam reports that Imam Ahmed stated: *"If the companions of the Prophet (peace and blessings be upon him) differ, and a man chooses one of the opinions from one of the companions of the Prophet (peace and blessings be upon him), the truth with Allah is one; therefore it is upon a man to exert himself (in legal reasoning) and he does not know if he has arrived at the truth or has erred; and this is what Umar (may Allah be pleased with him) said: 'I swear by*

Allah, Umar does not know if he has arrived at the truth or has erred.' I say: If a man takes the opinion of the companions and another takes the opinion of a tabi'ee, the truth is with the one who took the opinion of the companion and whosoever takes the opinion of the tabi'een his interpretation is erroneous."

Therefore if the statement of the companions differ regarding a ruling, Imam Ahmed would choose the closest to the divine text of the Qur'an or *sunnah* and if he did not find any of the opinions corroborated by the texts, he would mention the differing opinions without affirming one of them.

Al-Marrudhi narrates that Imam Ahmed (may Allah have mercy upon him)

said: "*If the sahabah differ, we look to (take) the closest opinion in agreement to the Quran and sunnah.*"

4) Usage of mursal and weak narrations when there is nothing on the matter that contradicts it

Hadith al-Mursal: According to the *hadith* specialists, it is the narration in which a *tabi'ee* (follower) narrates directly from the Prophet Mohammed (peace and blessings be upon him) without mentioning a person from the *sahabah*.

According to the specialists of *fiqh*, it is the statement of anyone in anytime after the era of the *sahabah*, attributing directly to the Prophet (peace and blessings be upon him).

The definition of weak *hadith* is: Every narration that is not very weak, or contradicts Islamic norms, or narrated by someone who is suspected of lying or categorically false.

If Imam Ahmed (may Allah have mercy upon him) does not have a narration, statement of a *sahabi*, or consensus that goes against it, then he prefers this type of narration to *qiyas*.

Al-Athram narrates that Imam Ahmed said: "...*It may be that there*

is a narration from the Prophet (peace and blessings be upon him) that has some weakness in the chain, we take it if nothing stronger is found contradicting it, and it may be that we take a mursal narration if nothing stronger is found contradicting it.”

And according to the narration of al-Fadl b. Ziyad, he said: *“The mursal narrations of Sa’eed b. al-Musayyab are the most authentic, and the mursal narrations are satisfactory; and there are no mursal narrations weaker than those of al-Hasan, ‘A’ta, and Ibn Abi Rabah as they narrate from every person.”*

From the evidences that support that the Imam would take the weak *hadith* as a means of derivation is his statement as narrated by his son Abd Allah: *“My methodology is that I do not go against the weak hadith if there is nothing that contradicts it.”*

Abd Allah also narrates that he heard his father say: *“I prefer weak hadith to juristic opinion.”*

Abd Allah once asked his father: *“A man finds himself in a country in which there is a person of hadith who does not know the strong hadith from the weak hadith and another who is a person of juristic opinion (ijtihad), who should he consult if he is finds himself in some difficulty?”* His father replied: *“He should consult with the person of hadith and not ask the person of opinion, because weak hadith are stronger than opinion.”*

5) Qiyas (Juristic Analogy)

Imam Ahmed accepted *qiyas* when it involved the deriving of a substantive or latter ruling based on an original ruling from a principal source by virtue of a common legal factor that the original and latter ruling share entirely. This is known as *qiyas al ‘illah*. Husain b. Hasan reports Imam Ahmed said: *“Qiyas is to exercise reasoning based upon an original matter when there is complete commonality.”*

It has also been reported from Bakr b. Mohammed from his father

that Imam Ahmed said the following regarding *qiyas* and its application: *"No one should dispense with qiyas. The judge or the imam who encounters a matter should gather together the people and exert legal reasoning and compare as Umar (may Allah be pleased with him) wrote to Shurayh: "Practice reasoning regarding matters."*

However Imam Ahmed does not resort to *qiyas* in deriving rulings except in cases of sheer necessity when he is unable to find evidence in the divine sources, or *sunnah*, or statement of a *sahabah*, or a *mursal* or weak hadith.

Al-Maymooni narrates from Imam Ahmed: *"I asked al-Shafi'i' about qiyas and he replied: 'Resort to it only in necessity.' and I liked his statement."*

Abu l-Harith al-Sa'igh reports from Imam Ahmed the following when he was told about *ahl al-Ra'i* (rationalists) and their leaving hadith: *"What will you do with discretionary opinion and qiyas when a report suffices (for evidence)?!"*

6) Istihsaan (Scholarly Discretion)

It is to depart from using *qiyas* to another stronger precedent based on the discretion of the jurist. This form of *istihsaan* is accepted by Imam Ahmed because the evidence supports it, however if there is no support except whim, then Imam Ahmed rejects this.

It has been reported from him by al-Maymooni that he said: *"Istihsaan (requires) that a person makes tayammum (dry ablution) for every prayer, but qiyas rules that it is a substitute for water until a person defiles (state of purity) or comes upon water."*

In the narration of al-Marrudhi we find that he states: *"It is permissible to purchase the black land, but it is not permissible to sell it." Someone asked: 'How does one buy from one who does not own?' He said: "What you have said is qiyas, however (we opt) for istihsaan."*

7) Al-Istishaab (Presumption of Continuity)

It is the presumption of continuation, so that *which* is proven to exist continues existing, and to continue to negate that which does not exist. In other words, it is to presume the continuation of the existing state until the contrary is established through legal means.

It is regarded as a proof by Imam Ahmed when no evidence can be found from divine texts, *ijma'*, statements of the *sahabah* and their *fatawa*, or *qiyas*; so the Imam does not resort to it as a proof except when transmission is unavailable.

8) Saad al-Dhara'i (Blocking of the Means)

This is to forbid that which is normally permissible if it becomes the means to something forbidden. This principle is based upon the fact that Islamic legislation takes into consideration the underlying objectives and intentions as well as examining the results of actions.

It should be added that the principle of 'blocking the means' also encompasses the use of tricks. This occurs when a person seeks to employ a legally sound statement or action to fulfill a non-related impermissible objective. Imam Ahmed forbids the use of ruse in legal rulings if the purpose of the person employing it is to circumvent the objective of the Lawgiver in His legislation. This is because the use of ruse completely contradicts the principle of blocking the means as blocking the means seeks to block the path to corruption and its means, and the person employing ruse seeks to open the path to corruption through its use.

According to the narration of Musa b. Sa'eed, Imam Ahmed said: *"None of these ruses are permissible."* And according to the narration of Salih Abu l-Harith he said: *"These ruses that those people have come with, so-and-so and his companions... they intended something and so they schemed to violate it. The thing about which they have been told is impermissible, they schemed together until they made it*

permissible. First they said 'It is not permissible to use mortgaging'. Thereafter, they said, 'Let us make a ruse so that it can be used.' How can they make permissible that which Allah has forbidden!' And Imam Ahmed said: 'The Prophet (peace and blessings be upon him) cursed the person who makes things permissible and the one who it is done for.'”¹

These are the fundamental principles upon which Imam Ahmed founded his school, even if he employed various types of principles of derivation in substantive laws and rulings such as his use of *Masalih al-Mursala* (considerations of public welfare) and *al-Urf* (custom). However, the most correct opinion is that these are not employed by the Imam as fundamental principles (as employed by other Imams) or independent proofs, but as supportive principles that lend weight to the fundamental principles that the Imam has clearly stipulated and employed.



¹ Hadith can be found in the Sunan of Abu Dawud, al-Tirmidhi and Ibn Majah.

Chapter Four

The Most Notable Works of the School

The Hanbali School is replete with beneficial *fiqh* works that transmit the opinions of the Imam, his explicit statements, the divergent opinions among his students, and the preferred or dominant positions that his students arrived at based upon the principles of derivation and rulings of their teacher. These works, with their varying styles, stem from three primary sources:

First: The books and letters of Imam Ahmed.

Second: The works that contain the responsa narrated from Imam Ahmed in which his direct students narrate directly from him.

Third: The compilations of the rulings that were narrated from him through his students; the most important of these works is *al-Jami' li-Masa'il Imam Ahmed* of Abu Bakr al-Khallal.

Every work that was written regarding the Hanbali *fiqh* including epitomes, primers, and commentaries, rely upon these three sources as references.

Despite the presence of many works with varying styles and elements of benefit, we find that the Hanbali scholars did not deal with them all in the same way in terms of their being served. We find that some works became approved and their reputation spread far and wide, whilst others were neglected or forgotten. Perhaps it can be said that the main reason behind this is that the authors of the more notable works had put more effort into evaluating and identifying the most correct positions within the school, and naturally these texts became more favoured by subsequent scholars who further commented on them.

We can divide these works into four categories:

The First Category: The Responsa of Imam Ahmed

This category encompasses the transmission of statements, opinions and *fatawa* given by Imam Ahmed after his direct students enquired of him. The most notable of these works are:

- 1) Masa'il Ishaq b. Mansoor al-Kawsaj al-Marwazi (d. 251 AH).
- 2) Masa'il Salih b. Ahmed b. Hanbal (d. 266 AH).
- 3) Masa'il Ishaq b. Ibrahim b. Hani al-Naysaburi (d. 275 AH).
- 4) Masa'il Abi Dawud Sulaiman b. Ash'ath al-Sijistani (d. 275 AH).
- 5) Masa'il Harb b. Isma'il al-Karmani (d. 280 AH) - Kitab al-Nikah to the end of the book have been published.
- 6) Masa'il Abd Allah b. Ahmed b. Hanbal (d. 290 AH).

The Second Category: Works of the 'Al-Mutaqadimeen'

1) Al-Jami' li-Uloom Imam Ahmed: of Abu Bakr Ahmed b. Mohammed al-Khallal (d. 311 AH), which is regarded as the most comprehensive work in the school, dedicated to transmitting the statements and *fatawa* of Imam Ahmed, with their chains of narrations directly from his students; however, the author occasionally narrates through one or two intermediaries.

It is an extremely large work comprising twenty volumes, however it does not encompass all of the responsa narrated from Imam Ahmed. Due to its breadth, it became the central focus of written works for Hanbali scholars who dedicated summaries and commentaries on the text. Most of the work has been lost, and only a few chapters remain which have become the centre of attention for researchers and students of knowledge who have edited and published the work. The surviving chapters are:

- a) *Kitab al-Wuqoof*

b) *Kitab al-Tarajul*

c) *Kitab Ahkaam al-Nisai*

d) *Kitab Ahl l-Milal, wa Rida wa Zanadiqa wa Tarik al-Salah wa l-Faraidh*

2) Mukhtasar al-Khiraqi: of Abi Qasim Umar b. Husain al-Khiraqi (d. 334 AH) which is the first and most notable treatise in the Hanbali School. The author sufficed with mentioning only one position for each matter which he regarded as the dominant position of the School. Due to the immense popularity of this work, the scholars served it extremely well by writing addenda, commentaries and super-commentaries upon it, such that approximately three hundred commentaries have been written on it.

The Third Category: Works of the ‘Al-Mutawasiteen’

The most noteworthy works of the Hanbali School in this period are:

1) The books of the great jurist Abu Mohammed Muwaffaq al-Deen Abd Allah b. Ahmed b. Qudamah al-Maqdisi (d. 620 AH), of which four are the most notable:

a) Umdat al-Fiqh: which is a short preparatory treatise that he wrote for beginners of Hanbali *fiqh*. He limited it to one position for each ruling and provided the evidences for each.

b) Al-Muqni’: which he wrote for the students who had completed the beginner texts of the school. He provided two or three positions for each ruling, but removed mention of scholarly reasoning or evidences so that students may become accustomed to comparing positions, *ijtihad*, and identifying the most correct positions.

c) Al-Kafi: which is an intermediate level text which focuses on providing the dominant positions with their supporting evidences. He focuses on providing only one position for each ruling; however he

may on occasion, and for the purposes of practice, provide more than one.

d) Al-Mughni fi Sharh al-Khiraqi: which is his most comprehensive and notable work. In it he provides a commentary of al-Khiraqi's *Mukhtasar* with some additional rulings. He discusses the differing opinions between the schools of thought and within the Hanbali School, providing the evidences and scholarly reasoning.

2) Al-Muharar fi al-Fiqh: of Abu l-Barakat Majd al-Deen Abdus Salam b. Taymiyyah (d. 652 AH), which is one of the relied-upon texts for identifying the preferred opinion within the Hanbali School. In this work, Ibn Taymiyyah strives to write with brevity and does not include the evidences or scholarly reasoning for the positions, but indicates the level of authenticity for the reports transmitted down from Imam Ahmed. Occasionally, he points out the divergent opinions on certain matters without discussing them.

3) Al-Furoo': of Abu Abd Allah Shams al-Deen Mohammed b. Muflih al-Hanbali (d. 763 AH), which is a comprehensive work that covers the *furoo'* (substantive laws) with a focus on the dominant positions in the school. In this work, the Ibn Muflih discusses the differing and preferred opinions and sometimes the positions held by the three imams with a preference for positions taken by his own shaikh, Ibn Taymiyyah.

4) Al-Mubdi' fi Sharh al-Muqni': of Abu Ishaq Burhan al-Deen Ibrahim b. Mohammed b. Abd Allah b. Muflih (d. 884 AH), which is a commentary on *al-Muqni'* of Ibn Qudamah al-Maqdisi. In this work, the author provides various matters and rulings along with their evidences from the Qur'an and *sunnah*. He provides the varying opinions of Imam Ahmed and his direct students, expounding on the complex and intricate phrases, and then selecting from the divergent positions the most preferred of them.

The Fourth Category: Works of the ‘Al-Muta’akhireen’

The most noteworthy works of the Hanbali School in this period are:

1) Al-Insaaf fi Ma’rifat al-Rajih min al-Khilaaf: of Alaa al-Deen Ali b. Sulaiman al-Mardawi (d. 885 AH) which he based upon the work of Ibn Qudamah’s *al-Muqni’*. In this work, al-Mardawi takes the rulings discussed in *al-Muqni’* and adds to them in areas that were not previously covered by Ibn Qudamah. He provides some beneficial points and observations as well as the summary of any divergent opinions. It is regarded as one of the most comprehensive works in the School, owing to its large collation of reports from Imam Ahmed, as well as the various positions, *awjuh*, *ihimalaat*, and its authenticating the divergent opinions. The text also discusses the preferred position in the school, and encompasses the contents of the most notable summaries, commentaries and marginal glosses that preceded it to the extent that Imam al-Mardawi’s work allows one to dispense with all previous works within the School.

2) Iqna’ li Talib al-intifa’: of Sharaf al-Deen Abu l-Najah Musa b. Ahmed b. Musa al-Hajjawi (d. 968 AH), which has been published in four volumes. Most of this work was based upon *al-Mustawib* of al-Samarrai’. This book is distinguishable by the many rulings it contains, the usage of simple and clear language, and the verification and abbreviation of positions. The shortened positions are provided without their supporting evidences or scholarly reasoning; only stating the most dominant position in the school, and occasionally providing the divergent opinions owing to the strength of their evidences, leaving them unexplained due to the inability to give preference to either of the opinions.

3) Al-Iqna’: is regarded as one of the most important and relied upon works that the *Muta’akhireen* have taught and served through commentaries, marginal glosses, summaries, and the explaining of difficult words to the extent that it has become the most relied upon

within the school for issuing verdicts and judging. From the best commentaries of *al-Iqna'* is *Kashf al-Qina' un Matn al-Iqna'* of the verifier Shaikh Mansoor al-Bahuti (d. 1051 AH).

4) Muntaha al-Iradaat fi l-Jami bayn al-Muqni wa l-Tanqih wa Ziyadaat: of Abu Bakr Taqi al-Deen Mohammed b. Ahmed al-Futuhi known famously as Ibn al-Najjar (d. 972 AH). This book is a compilation of two essential Hanbali works into one book: Ibn Qudamah's *al-Muqni'* and Alaa al-Deen al-Mardawi's *Tanqeeh al-Mushbi'* which is a redaction of the matters and rulings mentioned in *al-Muqni*. Al-Futuhi compiled the texts and rulings of both works and presented them in a way that facilitates benefiting from the rulings contained within them. He then provided the most dominant position for each ruling within the school. This work is regarded among latter-day scholars as one of the relied-upon works serving as a reference for issuing verdicts and judgments

5) Ghayat al-Muntaha fi al-Jam bayn al-Iqna' wa l-Muntaha: of Mari' b. Yusuf al-Karmi (d. 1033 AH). It is a compilation into one book of two latter-day, relied-upon, Hanbali works that served as primary references for issuing verdicts and judgments in their time and they are: *Iqna' li Talib al-Intifa'* of al-Hajjawi and *Muntaha al-Iradaat* of Ibn Najjar. This book is notable for discussing the variant opinions within the School, and it became the relied-upon work for identifying the preferred or dominant position of the School when divergent opinions occur between the authors of *Iqna'* and *al-Muntaha*. This was mentioned by Imam al-Safarinee in his bequest to one of his students from Najd, where he stated: "*You should take what is found within the two books al-Iqna' and al-Muntaha, but if they differ, then look at what the author of al-Ghayah gives preference to.*"



Chapter Five

The Most Frequently Referenced Nomenclature of the School

The Hanbali School like other schools, features nomenclature that is employed by its scholars in their works, which carry meanings related to the various positions of Imam Ahmed, as well as the other Imams of the school, their verdicts, and their analogical reasoning based upon the principal sources, methodology and verdicts for matters that Imam Ahmed did not address.

In this way, we find titles that refer to specific texts or Imams that were renowned for their evaluation and redacting of the various statements and opinions in the school. The main purpose behind the use of this nomenclature is brevity, specifically for the terms that are repeated frequently.

In this section, we will identify the nomenclature based on the following headings:

Firstly: Nomenclature in distinguishing the opinions of Imam Ahmed from his followers

Al-Riwayah: It is the verdict that one of Imam Ahmed's students narrated from him regarding an issue and it is divided into two categories:

First: **Al-Sareeh** (explicit): It refers to the explicit ruling of Imam Ahmed using his own words, not leaving room for interpretation. His students express this using several terms such as: *nassun*, *nasa alayhi*, *al-mansus alayhi*, *al-mansus unhu*, *unhu*, *rawahu al-jama'ah*.

Second: **Al-Tanbeeh** (implicit): It refers to the inferred understanding that a narrator has come to from a statement or indication of Imam Ahmed due to it not being based upon an explicit

source. His students express this using several terms such as: *awma ilayhi, ashar ilayhi, dul kalamahu alayhi, tawaquf fi, sakata anhu*.

Al-Wajh: It refers to the ruling that has been derived based on the principles and statements of the school, by scholars capable of *ijtihad* within the school. It may be contrary to the principles of Imam Ahmed if supported by evidences.

Al-Ihtimaal: The feasibility of a ruling to be reevaluated and for the end ruling to be different than the initial ruling given, owing to the evidences being stronger or carrying the same weight as those in the initial ruling. It carries a similar meaning to *wajh*, except that *wajh* implies that *fatwa* is given according to it, however *ihtimaal* is when the ruling is valid to become *wajh*, but it is not necessary to give *fatwa* according to it. However, if *fatwa* is given according to it then it is regarded as *wajh* for that person.

Al-Takhreej: Using an established ruling as a base to extract a ruling on an issue that shares commonalities, and equating between them. This can only be achieved when the underlying meaning is understood and is based upon the fundamental laws of derivation in the School, or analogy.

Zahir al-Madhab: This refers to the position that is well known to all in the school.

Al-Qawl: It is a general term that refers to any opinion with regards to a matter which has come from Imam Ahmed or the scholars of the school and includes *wajh, ihtimal, takhreej, nasun*, and also *al-riwayah*.

Qiyas al-Madhab: Refers to the derivation of a substantive law not directly coming from Imam Ahmed, based upon a substantive law due to a common legal cause.

Al-Tawaquf: It refers to the silence employed by Imam Ahmed or

one of the *mujtahid* scholars in the school with regards to a matter when the supporting evidences of equal weight appear to contradict each other, but in reality do not do so.

Secondly: Nomenclature used in reference to Tarjeeh & Tas-heeh

These are the terms that are used by the scholars within the school to identify *tarjeeh* (preferred opinion) and *tas-heeh* (authenticity) between the various narrations and opinions ascribed to Imam Ahmed or others:

- 1) Al-asahh, fi l-asahh, ala l-asahh, al-sahih, fi l-sahih min al-madhab, fi al-sahih ‘anhu, fi asah l-qawlayn, fi asah l-aqwaal, fi asah l-wajhayn, fi asah l-awjuh, al-awal asahh, hiya asahh, al-awal aqyas wa asahh, hadha sahih indi.
- 2) Al-mashoor, fi l-mashoor ‘anhu, ala l-mashoor, al-ashhar.
- 3) Al-azhar, azharahuma, ala l-azhar, ala l-azharahima, fi l-azhar, fi l-azhar l-wajhayn, fi l-azhar l-awjuh.
- 4) Riwayah wahida, quwlun wahida, wajhun wahida.
- 5) Bila khilaaf fi l-madhab, bila nizaa’.
- 6) Al-mansus, al-madhab l-mansus, nassun, nasa alayhi wa huwa ikhtiyaar al-ashaab.
- 7) Awalahuma katha, awla katha, huwa awla.
- 8) Al-aqwa, fi l-aqwa, yuqawa.
- 9) Al-awal ahsan.
- 10) Akhtarahu ‘aamat l-ashaab, akhtarahu shuyukhuna.

11) Al-madhab katha, al-madhab al-awal.

12) Al-qiyas katha, fi qiyaas l-madhab, qiyaas l-madhab katha, al-awwal aqyas.

We find that some of the scholars use their own nomenclature that varies from that which is common in the *madhab* in order to show the preferred narration, opinion, statement, theory and so on. They usually introduce their terms in the introduction of their work as was done by Abu Bakr b. Zayd al-Jira'i al-Hanbali (d. 883 AH) in *Ghayat al-Matlab fi Ma'rifat al-Madhab*.

Thirdly: Nomenclature used in reference to some scholars

From the terms that are used in the works of *fiqh* are those that refer to particular scholars. In order to avoid the necessary lengthening of works by writing the full names of scholars they were given brief titles. From the most famous of these are:

Al-Qadhi: For the *Mutawassiteen* up until about the eight century - this refers to Qadhi Mohammed b. al-Husain b. Mohammed b. Khalaf b. Ahmed b. Fara also known as Abu Ya'la (458 AH). However, if used by the *Muta'akhireen* such as the authors of *al-Iqna'* or *al-Muntaha* it refers to Qadhi 'Alaa ul-Deen Ali b. Sulaiman al-Mardawi (885 H).

Al-Shaykh: For the *Mutawassiteen* such as Ibn Qadhi Jabalah (d. 771 AH) al-Shams Ibn Muflih and Ibn al-Lahaam (d. 803 AH), Abu Bakr b. Zayd al-Jira'i (d. 883 AH), it refers to Muwaffaq al-Deen Abu Mohammed Abd Allah b. Qudama al-Maqdisi.

However, if used by the *Muta'akhireen*, it refers to Abu l-Abbas Ahmed b. Haleem Ibn Taymiyyah (d. 728 AH).

Al-Shaykhan: (lit. two shaykhs) This refers to Muwaffaq al-Deen Abu Mohammed Abd Allah b. Qudama al-Maqdisi (d. 620 AH) and

Majd al-Deen Abu l-Barakat Abd al-Salam b. Abd Allah Abi l-Qasim b. Mohammed b. Taymiyyah (d. 652 AH)

Shaykh al-Islam: This refers to two scholars in the school: Muwaffaq al-Deen Abu Mohammed Abd Allah b. Qudama al-Maqdisi (d. 620 AH) and Abu l-Abbas Ahmed b. Haleem Ibn Taymiyyah (d. 728 AH). It is far more commonly used for the second one.

Al-Sharih: This title most often refers to Shaykh Abu Umar Abdur Rahman b. Mohammed b. Ahmed b. Qudama (d. 682 AH).

Al-Jama'ah: This title when used generally refers to seven students of Imam Ahmed who are: Abd Allah and Salih both sons of the Imam, Hanbal his cousin, al-Marrudhi Ibrahim al-Harbi (d. 285 AH), Abu Talib (d. 244 AH), and al-Maymoon (d. 274 AH); and they are the ones meant by the term '*It was narrated by al-Jama'ah*'.



Table of Contents

Contents	Page
A Message From The Management	3
Prologue	5
 Imam Abu Hanifah al-Numan's School of Thought 	
Chapter One: Biography of the Founder	15
Firstly: His Name, Lineage and Birth	15
The Companions Whom The Imam Met	16
Secondly: His Upbringing and Seeking of Knowledge	17
Thirdly: His Most Notable Teachers and Students	18
Fourthly: His Assuming the Chair for Teaching and Legal Verdicts	19
Fifthly: His Writings	20
Sixthly: His Tribulation	20
Seventhly: The Praise of the Scholars Regarding Imam Abu Hanifah	21
Eighthly: His Passing Away	23
 Chapter Two: The Development of the School Throughout History and its Phases	 25
The First Phase: The Founding of the School and its Development (120-204 AH)	26
The Second Phase: The Growth, Expansion and Spread of the School (204 - 710 AH)	28
The Third Phase: The Stability of the School (710 AH - present day)	29
 Chapter Three: The Fundamental Principles of Derivation in the School	 31
1) The Book of Allah:	32
2) The Sunnah	32
3) Ijma'	34
4) The Statements of the Sahabah	34
5) Qiyas	34
6) Istihsaan	35

Contents	Page
7) al-Urf	35
Chapter Four: The Most Notable Works of the School	37
Firstly: The Authoritative Works	38
Secondly: The Authoritative Treatises	38
Chapter Five: Chapter Five: The Most Frequently Referenced Nomenclature of the School	45
Firstly: Nomenclature Used in Relation to The Hanafi scholars	45
Words Referring to Scholars	45
Letters Referring to Scholars	47
Secondly: Nomenclature Used in Relation to Penned Works	48
Thirdly: Nomenclature Used in Relation to Tarjeeh (preferred opinion)	49
 Imam Malik ibn Anas' School of Thought	
Chapter One: Biography of the Founder	57
Firstly: His Name, Sobriquet and Birth	57
Secondly: His Birth and Upbringing	57
Thirdly: His Seeking of Knowledge	58
Fourthly: His Most Notable Teachers	59
Fifthly: His Most Notable Students	60
Sixthly: His Writings	61
Seventhly: The Praise of the Scholars Regarding Imam Malik	61
Eighthly: His Passing Away	63
Chapter Two: The Development of the School Throughout History and its Phases	65
The First Phase: The Founding and Construction of the School (110 - 300 AH)	65
The Second Phase: The Development of the School (301 - 600 AH)	66
The Third Phase: The Stability and Continuity of the School (601 AH - present)	66

Contents	Page
Chapter Three: The Fundamental Principles of Derivation in the School	65
Firstly: The Holy Qur'an	69
Secondly: The Sunnah	70
Thirdly: Ijma'	70
Fourthly: Qiyas	70
Fifthly: The Practice of the Madinite Community	71
Sixthly: The Statement of a Sahabi	72
Seventhly: The Divine Laws of Previous Nations	72
Eighthly: al-Masalih al-Mursala	73
Ninthly: Istihsaan	74
Tenthly: Sadd al-Dhara'i	74
Eleventhly: al-Istishaab	75
Chapter Four: Sub-schools within the Maliki School	77
Firstly: The Madinite School	77
Secondly: The Egyptian School	78
Thirdly: The Iraqi School	79
Fourthly: The Moroccan School	80
Fifthly: The Andalusian School	82
Chapter Five: The Most Notable Works of the School	85
Firstly: Works Authored During the Founding and Construction of the School	85
Secondly: Works Authored During the Development of the School	87
1) The Works Focusing on Theoretical Fiqh	87
2) The Works Focusing on Applied Fiqh	89
Thirdly: Works Authored During the Stability of The School	89
1) The Works Focusing on Theoretical Fiqh	89
2) The Works Focusing on Applied Fiqh	93

Contents	Page
Chapter Six: The Most Frequently Referenced Nomenclature of the School	95
Firstly: Nomenclature Used in Relation to Scholars	95
1) Words Used to Identify the Scholars:	95
2) Letters Used to Identify the Scholars:	97
Secondly: Nomenclature Used in Relation to Books	98
1) Notable Words Used for Books:	99
2) Notable Letters Used for Books:	99
Thirdly: Nomenclature Used to Describe the Juristic Positions in the School.	99
Fourthly: Nomenclature Used to Describe the Preferred and Well Known Positions in the School.	100
 Imam Shafi'i's School of Thought	
Chapter One: Biography of the Founder	111
Firstly: His Name and Lineage	111
Secondly: His Birth and Upbringing	111
Thirdly: His Notable Journeys for Knowledge, Teachers and Students	111
Fourthly: His Writings	114
Fifthly: The Praise of the Scholars Regarding Imam al-Shafi'i	115
Sixthly: His Passing Away	116
 Chapter Two: The Development of the School Throughout History and its Phases	 119
The First Phase: The Founding and Construction of the School (195 - 204 AH)	119
The Second Phase: The Development of the School (204 - 505 AH)	120
The Third Phase: The Stability and Continuity of the School (505 AH - 1004)	122
The Fourth Phase: Serving the Works of the First and Second Evaluation (1004 - 1335 AH)	124
 Chapter Three: The Fundamental Principles of Derivation in the School	 127
Firstly: The Holy Qur'an	128

Contents	Page
Secondly: The Sunnah	128
Thirdly: Ijma' Regarding Matters Not in the Quran or Sunnah	131
Fourthly: The Statement of a Sahabi Upon Which There is no Disagreement	132
Fifthly: Qiyas	133
Chapter Four: The Most Notable Works of the School	135
Firstly: The Most Notable Works Written During the Period of Establishment, Transmission and Stability	136
Secondly: The Most Notable Works Authored During the Evaluation and Verification Phase	136
Thirdly: The Most Notable Encyclopedic Works in the Shafi'i School	137
Fourthly: The Most Notable Works of Fatawa in the Shafi'i School	138
Chapter Five: The Most Frequently Referenced Nomenclature of the School	139
Firstly: Nomenclature Used to Express the Presence of Various Statements and Opinions	139
Secondly: The Frequently Referenced Nomenclature Used for Choosing the Preferred and Dominant Position	140
Thirdly: Nomenclature Used in Relation to Clarification	141
Fourthly: Nomenclature Used in Relation to Scholars	141
Fifthly: Nomenclature (abbreviations) Used by Latter-day Scholars in Relation to Scholars	142
Imam Ahmed b. Hanbal's School of Thought	
Chapter One: Biography of the Founder	151
Firstly: His Name and Lineage	151
Secondly: His Birth and Upbringing	151
Thirdly: His Seeking of Knowledge	151
Fourthly: His Most Notable Teachers	152
Fifthly: His Most Notable Students	153
Sixthly: His Knowledge and Understanding	154
Seventhly: His Writings	156

Contents	Page
Eighthly: The Praise of the Scholars Regarding Imam Ahmed	157
Ninthly: His Passing Away	159
Chapter Two: The Development of the School Throughout History and its Phases	161
The First Phase: The Founding and Establishment of the School 204 - 241 AH.	161
The Second Phase: The Transmission and Development of the School (241-403 AH)	162
The Third Phase: The Verifying, Filtering and Redacting of the School (403 - 884 AH)	165
The Fourth Phase: The Stability and Continuity of the School (885 AH - present)	166
Chapter Three: The Fundamental Principles of Derivation in the School	169
Firstly: Divine Texts: The Holy Qur'an and Sunnah	169
Secondly: Ijma'	170
Thirdly: Fatawa of the sahabah for which no known contrary opinion exists	171
Fourthly: Usage of mursal and weak narrations when there is nothing on the matter that contradicts it	172
Fifthly: Qiyas	173
Sixthly: Istihsaan	174
Seventhly: Al-Istishaab	175
Eighthly: Sadd al-Dhara'i	175
Chapter Four: The Most Notable Works of the School	177
The First Category: The Responsa of Imam Ahmed	178
The Second Category: Works of the 'Al-Mutaqadimeen'	178
The Third Category: Works of the 'Al-Mutawasiteen'	179
The Fourth Category: Works of the 'Al-Muta'akhireen'	181
Chapter Five: The Most Frequently Referenced Nomenclature of the School	183
Firstly: Nomenclature in distinguishing the opinions of Imam Ahmed from his followers	183
Secondly: Nomenclature used in reference to Tarjeeh & Tasheeh	185

Contents	Page
Thirdly: Nomenclature used in reference to some scholars	186
Table of Contents:	189

